



भारत का राजपत्र

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प्राधिकार से प्रकाशित
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सं. 37]	नई दिल्ली, अक्टूबर 4—अक्टूबर 10, 2020, शनिवार/ आश्विन 12—आश्विन 18, 1942
No. 37]	NEW DELHI, OCTOBER 4—OCTOBER 10, 2020, SATURDAY/ASVINA 12—ASVINA 18, 1942

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(व्यय विभाग)

नई दिल्ली, 1 सितम्बर, 2020

का.आ. 890.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, भारतीय लेखापरीक्षा और लेखा विभाग में भारत सरकार के निम्नलिखित कार्यालय, जिसके अस्सी प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है, नामश:-

प्रधान निदेशक, लेखापरीक्षा, दक्षिण पश्चिम रेलवे, हुबली।

[फा. सं. ए-12034/02/2014-ईजी]

ऐनी जॉर्ज मैथ्यू, अपर सचिव

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, the 1st September, 2020

S.O. 890.—In pursuance of sub- rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Government of India in the Indian Audit and Accounts Department, in which eighty per cent. of the staff have acquired the working knowledge of Hindi, namely:-

Principal Director Audit, South Western Railway, Hubballi.

[F. No. A-12034/02/2014-EG]

ANNIE GEORGE MATHEW, Addl. Secy.

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 5 अक्टूबर, 2020

का.आ. 891.—केन्द्रीय सरकार, सुश्री जयश्री माट्शेरी गोपी, उप महानिदेशक, वित्तीय सेवाएं विभाग, वित्त मंत्रालय, भारत सरकार को भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 45-ज्ञक की उपधारा (7) के उपबंधों के अंतर्गत गैर-बैंकिंग वित्तीय कंपनियों द्वारा की गई अपीलों पर निर्णय लेने के लिए नामोदिष्ट करती है। इसे आम सूचना के लिए प्रकाशित किया जाता है।

[फा. सं. 1/27/2019-बीओए-II]

ज्ञानोत्तोष राय, अवर सचिव

(Department of Financial Services)

New Delhi, the 5th October, 2020

S.O. 891.—Ms. Jayasree Madassery Gopi, Deputy Director General in the Department of Financial Services, Ministry of Finance, Government of India is designated by the Central Government to decide appeals preferred by non-banking financial companies under the provisions of sub-section (7) of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934). This is published for general information.

[F. No. 1/27/2019-BOA.II]

JNANATOSH ROY, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 22 सितम्बर, 2020

का.आ. 892.—कानूनी आदेश राजनयिक और कोंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार श्री सार्थक मल्ल, सहायक अनुभाग अधिकारी को 22 सितम्बर, 2020 से भारत के प्रधान कोंसलावास, शिकागो में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/1/2015]

विष्णु कुमार शर्मा, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 22nd September, 2020

S.O. 892.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Sarthak Mall, Assistant Section Officer in Consulate General of India, Chicago to perform the consular services as Assistant Consular Officer with effect from 22 September, 2020.

[F. No. T-4330/1/2015]

VISHNU KUMAR SHARMA, Director (CPV)

नई दिल्ली, 28 सितम्बर, 2020

का.आ. 893.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के उच्चायोग, निकोसिया में श्री रवीन्द्र कुमार दूत, सहायक अनुभाग अधिकारी को दिनांक 28 सितम्बर 2020 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/1/2015]

विष्णु कुमार शर्मा, निदेशक (सी.पी.वी.)

New Delhi, the 28th September, 2020

S.O. 893.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Ravindra Kumar Doot, Assistant Section Officer as Assistant Consular Officer in the High Commission of India, Nicosia to perform the Consular services with effect from 28 September, 2020.

[F. No. T-4330/1/2015]

VISHNU KUMAR SHARMA, Director (CPV)

नई दिल्ली, 28 सितम्बर, 2020

का.आ. 894.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास, हमबनतोता में श्री रवि कुमार, सहायक अनुभाग अधिकारी को दिनांक 28 सितम्बर 2020 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/05/2020]

विष्णु कुमार शर्मा, निदेशक (सी.पी.वी.)

New Delhi, the 28th September, 2020

S.O. 894.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Ravi Kumar, Assistant Section Officer as Assistant Consular Officer in the Consulate General of India, Hambantota to perform the consular services with effect from 28 September, 2020.

[F. No. T-4330/05/2020]
VISHNU KUMAR SHARMA, Director (CPV)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 7 अक्टूबर, 2020

का.आ. 895.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री शिव प्रकाश शुक्ला, अधिवक्ता और श्री अनुराग कुमार सिंह, अधिवक्ता को, इलाहाबाद उच्च न्यायालय, इलाहाबाद और उसकी लखनऊ स्थित न्यायपीठ के समक्ष दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा अन्वेषण किए गए मामलों से उद्भूत अभियोजन, अपील, पुनरीक्षण और किसी अन्य विषय को संचालित करने के लिए, नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेश होने तक, इनमें से जो भी पहले हो, दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) के विशेष लोक अभियोजकों के रूप में नियुक्त करती है।

[फा. सं. 225/18/2018-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 7th October, 2020

S.O. 895.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Shiv Prakash Shukla, Advocate and Shri Anurag Kumar Singh, Advocate as Special Public Prosecutors of Delhi Special Police Establishment (Central Bureau of Investigation) for conducting the prosecution, appeal, revision and any other matter arising out of the cases investigated by the Delhi Special Police Establishment (Central Bureau of Investigation) before the Allahabad High Court of Judicature at Allahabad and its Bench at Lucknow for a period of three years from the date of appointment or until further orders, whichever is earlier.

[F. No. 225/18/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 7 अक्टूबर, 2020

का.आ. 896.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री एजाज सलीम खान, अधिवक्ता को आरसी 07(एस)/2011/सीबीआई/एससी-1/नई दिल्ली (भंवरी देवी अपहरण और हत्या मामला) जिसे दिल्ली विशेष पुलिस स्थापन (सीबीआई) द्वारा विशेष न्यायाधीश, अजा/अजजा(पीओए) मामला, जोधपुर के न्यायालय में संस्थित किया गया था, में उस मामले से उच्च न्यायालय, जोधपुर में उद्भूत अपील, पुनरीक्षण या अन्य कार्यवाहियों में अभियोजन

का संचालन करने के लिए, उनकी नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या मामले के निपटान तक, इनमें से जो भी पूर्वतर हो, विशेष लोक अभियोजक नियुक्त किया जाता है।

[फा. सं. 225/06/2020-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 7th October, 2020

S.O. 896.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri. Ejaz Salim Khan, Advocate as Special Public Prosecutor for conducting prosecution of RC 07(S)/2011/CBI/SC-I/New Delhi (Bhanwari Devi Abduction and Murder Case), instituted by the Delhi Special Police Establishment (CBI) in the Court of Special Judge, SC/ST (POA) Cases, Jodhpur and appeals, revisions or other proceedings arising out of that case before the High Court, Jodhpur for a period of three years from the date of appointment or till disposal of the case, whichever is earlier.

[F. No. 225/06/2020-AVD.II]

S. P. R. TRIPATHI, Under Secy.

भारतीय अंतरिक्ष अनुसंधान संगठन
(अंतरिक्ष विभाग)

बैंगलूरु, 16 सितम्बर, 2020

का.आ. 897.—सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 70 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अंतरिक्ष विभाग इसके द्वारा सतीश धवन अंतरिक्ष केंद्र शार, श्रीहरिकोटा (एस.डी.एस.सी. शार) के सूचीबद्ध अनुभागों/क्षेत्रों/सेवाओं के लिए स्थापित आइ.टी. अवसंरचना को उक्त अधिनियम के प्रयोजन के लिए संरक्षित प्रणाली घोषित करता है।

इसके अंतर्गत शामिल किए गए एस.डी.एस.सी. शार के अनुभाग/क्षेत्र/सेवाएं निम्नांकित हैं:

- ठोस मोटर उत्पादन सुविधा एवं द्रव चरण भरण के लिए रेंज यंत्रीकरण प्रणाली, प्रक्रिया नियंत्रण प्रणाली।
- ठोस मोटर परीक्षण एवं प्रमोचन कॉम्प्लेक्स प्रणालियों के लिए यंत्रीकरण।

इस संरक्षित प्रणाली का उपयोग करने के लिए निम्नलिखित व्यक्तियों को प्राधिकृत किया जाएगा:-

- इसरो/एस.डी.एस.सी. शार के प्रधान द्वारा प्राधिकृत इसरो/ एस.डी.एस.सी. शार के पदनामित कर्मचारी;
- अंतरिक्ष विभाग के पदनामित अधिकारी/अभियंता;
- संविदागत प्रबंधित सेवा प्रदाता के प्राधिकृत सदस्य या कर्मचारी या तीसरे पक्षकार विक्रेता/विक्रेताओं या इसके सहभागी/सहभागियों; और
- इसरो/एस.डी.एस.सी. शार के प्राधिकृत व्यवसाय सहभागी/सहभागियों

- यह अधिसूचना आधिकारिक राजपत्र में इसके प्रकाशन की तारीख से प्रवृत्त होगी।

[सं. डी. एस. 5-15015/3/2020-अनु. 5-अं.वि.]

के. वि. रमण बाबू, अवर सचिव

INDIAN SPACE RESEARCH ORGANISATION

(Department of Space)

Bangaluru, the 16th September, 2020

S.O. 897.—In exercise of the powers conferred by sub-section (1) of section 70 of the Information Technology Act, 2000 (21 of 2000), the Department of Space hereby declares the IT infrastructure installed for listed Sections/ Areas/ services of **MASTER CONTROL FACILITY (MCF)**, as the protected system for the purpose of said Act.

Sections/Areas/services of MCF being covered under this are: -

- i) Spacecraft Health control and monitoring Process for on-orbit and launch operations of GEO/GSO/Navigation satellites
- ii) Satellite payload and Ground station operations

The following persons shall be authorised to access the protected system: -

- a) Designated ISRO/ MCF personnel authorized by Head of ISRO/ MCF;
- b) Designated officers and operations staff of Department of Space;
- c) Employees of Contractual Managed Service Provider or third-party vendor(s) or its partner(s) authorised by ISRO/ MCF; and
- d) ISRO/ MCF authorized business partners.

2. This notification shall come into force on the date of its publication in the Official Gazette.

[D.S.5-15015/3/2020-Sec-5-DOS]

K. V. RAMANA BABU, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 6 अक्टूबर, 2020

का.आ. 898.—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1796, तारीख 13 दिसम्बर, 2018, जो भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 22 दिसम्बर, 2018 में प्रकाशित की गई थी, द्वारा उससे संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में 1510.02 हेक्टेयर (लगभग) अथवा 3731.26 एकड़ (लगभग) माप वाली भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 13 दिसम्बर, 2020 से प्रारंभ होने वाली एक वर्ष की और अवधि को, ऐसी अवधि के रूप में विनिर्दिष्ट करती है जिसके भीतर केन्द्रीय सरकार, इससे संलग्न अनुसूची में यथा विनिर्दिष्ट उक्त भूमि को या ऐसी भूमि में अथवा उस पर के किसी अधिकार का अर्जन करने के अपने आशय की सूचना दे सकेगी ।

अनुसूची

सहारपुर – जाम्पानी कोयला ब्लॉक

जिला दुमका, झारखण्ड

[रिखांक संख्यांक यूपीआरवीयूएनएल/4(1)/प्लान/रेवेन्यू/1, तारीख 24 सितम्बर, 2018]

क्र. सं.	ग्राम का नाम	पटवारी सर्कल का नाम और संख्या	तहसील	जिला	क्षेत्र हेक्टेयर में (लगभग)	टिप्पणियां
1.	कोरीगड	जगतपुर, 32	शिकारीपाड़ा	दुमका	48.53	भाग
2.	ढोलकाटा	बेनागडिया, 1	शिकारीपाड़ा	दुमका	124.73	भाग
3.	पहाड़ अमचुआ	बेनागडिया, 2	शिकारीपाड़ा	दुमका	6.60	भाग
4.	सिमानीजोर	हरिपुर, 4	शिकारीपाड़ा	दुमका	40.50	भाग
5.	दलदली	हरिपुर, 5	शिकारीपाड़ा	दुमका	125.14	भाग
6.	लागलभंगा	हरिपुर, 7	शिकारीपाड़ा	दुमका	49.28	पूर्ण
7.	पातपहाड़ी	हरिपुर, 6	शिकारीपाड़ा	दुमका	47.26	पूर्ण
8.	पोखरिया	बेनागडिया, 4	शिकारीपाड़ा	दुमका	16.10	भाग
9.	मंझलाडीह	बेनागडिया, 6	शिकारीपाड़ा	दुमका	143.20	भाग
10.	निझोर	बेनागडिया, 5	शिकारीपाड़ा	दुमका	87.76	पूर्ण
11.	पहाड़पुर (हरिपुर)	बेनागडिया, 13	शिकारीपाड़ा	दुमका	17.45	भाग
12.	पोडा बसरिया	बेनागडिया, 14	शिकारीपाड़ा	दुमका	16.52	भाग
13.	सरसडांगा	हरिपुर, 12	शिकारीपाड़ा	दुमका	164.44	भाग
14.	जमरुपानी	हरिपुर, 11	शिकारीपाड़ा	दुमका	179.70	भाग
15.	छोटा चापडिया	हरिपुर, 14	शिकारीपाड़ा	दुमका	2.50	भाग
16.	वडाचापडिया	हरिपुर, 15	शिकारीपाड़ा	दुमका	5.09	भाग
17.	लताकान्दर	हरिपुर, 10	शिकारीपाड़ा	दुमका	13.13	भाग
18.	मकरापहाड़ी	हरिपुर, 8	शिकारीपाड़ा	दुमका	282.93	भाग
19.	हुलासडांगा	हरिपुर, 2	शिकारीपाड़ा	दुमका	48.56	भाग
20.	महुलबना	जगतपुर, 25	शिकारीपाड़ा	दुमका	26.05	भाग
21.	चिरुडीह	हरिपुर, 3	शिकारीपाड़ा	दुमका	64.55	भाग
कुल क्षेत्र : 1510.02 हेक्टेयर (लगभग) अथवा 3731.26 एकड़ (लगभग)						

सीमा-वर्णन :

(1) रेखा 1-2: कोरीगड ग्राम (थाना संख्या 04/0032) के मध्य भाग में बिन्दु '1' से प्रारंभ होती है, जो पूर्वी दिशा में मुड़ते हुए ग्राम सिमानीजोर (थाना संख्या 01/0004) से गुजरती है और दलदली ग्राम (थाना संख्या 01/0005) के दक्षिण-पश्चिम भाग में बिन्दु '2' पर समाप्त होती है।

(2) रेखा 2-3: रेखा दलदली ग्राम (थाना संख्या 01/0005) के दक्षिण-पश्चिम भाग में बिन्दु '2' से प्रारंभ होती है, जो उत्तरी दिशा में मुड़ते हुए ग्राम सिमानीजोर (थाना संख्या 01/0004) और चीरुडीह (थाना संख्या 01/0003) से गुजरती है और महुलबना ग्राम (थाना संख्या 04/0025) के मध्य भाग में बिन्दु '3' पर समाप्त होती है।

(3) रेखा 3-4: रेखा महुलबना ग्राम (थाना संख्या 04/0025) के मध्य भाग में बिन्दु '3' से प्रारंभ होती है, जो उत्तर-पूर्वी दिशा में मुड़ते हुए ग्राम हुलासडांगा (थाना संख्या 01/0002) के मध्य भाग में बिन्दु '4' पर समाप्त होती है।

(4) रेखा 4-5: रेखा ग्राम हुलासडांगा (थाना संख्या 01/0002) के मध्य भाग में बिन्दु '4' से प्रारंभ होती है, जो पूर्वी दिशा में मुड़ते हुए ग्राम हुलासडांगा (थाना संख्या 01/0002) के मध्य भाग में बिन्दु '5' पर समाप्त होती है।

(5) रेखा 5-6: रेखा ग्राम हुलासडांगा (थाना संख्या 01/0002) के मध्य भाग में बिन्दु '5' से प्रारंभ होती है, जो दक्षिण-पूर्वी दिशा में मुड़ते हुए ग्राम मकरापहाड़ी (थाना संख्या 01/0008) के उत्तरी भाग में बिन्दु '6' पर समाप्त होती है।

(6) रेखा 6-7: रेखा ग्राम मकरापहाड़ी (थाना संख्या 01/0008) के उत्तरी भाग में बिन्दु '6' से प्रारंभ होती है, जो दक्षिण-पूर्वी दिशा में मुड़ते हुए ग्राम मकरापहाड़ी (थाना संख्या 01/0008) के मध्य भाग में बिन्दु '7' पर समाप्त होती है।

(7) रेखा 7-8: रेखा ग्राम मकरापहाड़ी (थाना संख्या 01/0008) के मध्य भाग में बिन्दु '7' से प्रारंभ होती है, जो दक्षिण-पूर्वी दिशा में मुड़ते हुए ग्राम जमरुपानी (थाना संख्या 01/0011) के उत्तर-पश्चिमी भाग में बिन्दु '8' पर समाप्त होती है।

(8) रेखा 8-9: रेखा ग्राम जमरुपानी (थाना संख्या 01/0011) के उत्तर-पश्चिमी भाग में बिन्दु '8' से प्रारंभ होती है, जो उत्तर-पूर्वी दिशा में मुड़ते हुए ग्राम लताकान्दर (थाना संख्या 01/0010) के दक्षिण-पश्चिमी भाग में ग्राम लताकान्दर (थाना संख्या 01/0010) और ग्राम जमरुपानी (थाना संख्या 01/0011) की सीमा के निकट बिन्दु '9' पर समाप्त होती है।

(9) रेखा 9-10: रेखा ग्राम लताकान्दर (थाना संख्या 01/0010) की दक्षिण-पश्चिमी सीमा में ग्राम लताकान्दर (थाना संख्या 01/0010) और ग्राम जमरुपानी (थाना संख्या 01/0011) की सीमा के निकट बिन्दु '9' से प्रारंभ होती है, जो उत्तर-पूर्वी दिशा में मुड़ते हुए ग्राम लताकान्दर (थाना संख्या 01/0010) के मध्य भाग में बिन्दु '10' पर समाप्त होती है।

(10) रेखा 10-11: रेखा ग्राम लताकान्दर (थाना संख्या 01/0010) के मध्य भाग में बिन्दु '10' से प्रारंभ होती है, जो दक्षिण-पूर्वी दिशा में मुड़ते हुए ग्राम वडाचापडिया (थाना संख्या 01/0015) के दक्षिण-पूर्वी भाग में ग्राम वडाचापडिया (थाना संख्या 01/0015) और छोटा चापडिया (थाना संख्या 01/0014) की सीमा के निकट बिन्दु '11' पर समाप्त होती है।

(11) रेखा 11-12: रेखा ग्राम वडाचापडिया (थाना संख्या 01/0015) के पूर्वी भाग में वडाचापडिया (थाना संख्या 01/0015) और छोटा चापडिया (थाना संख्या 01/0014) की सीमा के निकट बिन्दु '11' से प्रारंभ होती है, जो दक्षिण दिशा में मुड़ते हुए ग्राम सरसडांगा (थाना संख्या 01/0012) के उत्तर-पूर्वी भाग में बिन्दु '12' पर समाप्त होती है।

(12) रेखा 12-13: रेखा ग्राम सरसडांगा (थाना संख्या 01/0012) के उत्तर-पूर्वी भाग में बिन्दु '12' से प्रारंभ होती है, जो दक्षिण दिशा में मुड़ते हुए ग्राम सरसडांगा (थाना संख्या 01/0012) के दक्षिण-पश्चिमी दिशा में

बिन्दु '13' पर समाप्त होती है।

- (13) रेखा 13-14: रेखा ग्राम सरसडांगा (थाना संख्या 01/0012) के मध्य भाग में बिन्दु '13' से प्रारंभ होती है, जो दक्षिण-पश्चिम दिशा में मुड़ते हुए ग्राम सरसडांगा (थाना संख्या 01/0012) के दक्षिण-पश्चिमी भाग में बिन्दु '14' पर समाप्त होती है।
- (14) रेखा 14-15: रेखा ग्राम सरसडांगा (थाना संख्या 01/0012) के दक्षिण-पश्चिम भाग में बिन्दु '14' से प्रारंभ होती है, जो दक्षिण-पूर्वी दिशा में मुड़ते हुए ग्राम सरसडांगा (थाना संख्या 01/0012) के दक्षिण-पूर्वी भाग में बिन्दु '15' पर समाप्त होती है।
- (15) रेखा 15-16: रेखा ग्राम सरसडांगा (थाना संख्या 01/0012) के दक्षिण-पूर्वी भाग में बिन्दु '15' से प्रारंभ होती है, जो दक्षिण-पश्चिमी दिशा में मुड़ते हुए ग्राम पोडा बसरिया के उत्तर-पूर्वी भाग में ग्राम पोडा बसरिया (थाना संख्या 05/0014) और ग्राम सरसडांगा (थाना संख्या 01/0012) की सीमा के निकट बिन्दु '16' पर समाप्त होती है।
- (16) रेखा 16-17: रेखा ग्राम पोडा बसरिया (थाना संख्या 05/0014) के उत्तर-पूर्वी भाग में ग्राम पोडा बसरिया (थाना संख्या 05/0014) और ग्राम सरसडांगा (थाना संख्या 01/0012) की सीमा के निकट बिन्दु '16' से प्रारंभ होती है, जो पश्चिमी दिशा में मुड़ते हुए ग्राम पहाड़पुर (हरिपुर) (थाना संख्या 05/0013) से गुजरते हुए ग्राम मंझलाडीह (थाना संख्या 05/0006) के पूर्वी भाग में बिन्दु '17' पर समाप्त होती है।
- (17) रेखा 17-18: रेखा ग्राम मंझलाडीह (थाना संख्या 05/0006) के पूर्वी भाग में बिन्दु '17' से प्रारंभ होती है, जो उत्तर-पश्चिमी दिशा में मुड़ते हुए ग्राम मंझलाडीह (थाना संख्या 05/0006) के पश्चिमी भाग में बिन्दु '18' पर समाप्त होती है।
- (18) रेखा 18-19: रेखा ग्राम मंझलाडीह (थाना संख्या 05/0006) के पश्चिमी भाग में बिन्दु '18' से प्रारंभ होती है, जो उत्तर-पश्चिमी दिशा में मुड़ते हुए ग्राम पोखरिया (थाना संख्या 05/0004) के मध्य भाग में बिन्दु '19' पर समाप्त होती है।
- (19) रेखा 19-20: रेखा ग्राम पोखरिया (थाना संख्या 05/0004) के मध्य भाग में बिन्दु '19' से प्रारंभ होती है, जो उत्तर-पूर्वी दिशा में मुड़ते हुए ग्राम दलदली (थाना संख्या 01/0005) के दक्षिण-पूर्वी भाग में ग्राम दलदली (थाना संख्या 01/0005) और पातपहाड़ी (थाना संख्या 01/0006) की सीमा के निकट बिन्दु '20' पर समाप्त होती है।
- (20) रेखा 20-21: रेखा ग्राम दलदली (थाना संख्या 01/0005) के दक्षिण-पूर्वी भाग में ग्राम दलदली (थाना संख्या 01/0005) और पातपहाड़ी (थाना संख्या 01/0006) की सीमा के निकट बिन्दु '20' से प्रारंभ होती है, जो उत्तर-पश्चिमी दिशा में मुड़ते हुए ग्राम दलदली (थाना संख्या 01/0005) के मध्य भाग में बिन्दु '21' पर समाप्त होती है।
- (21) रेखा 21-22: रेखा ग्राम दलदली (थाना संख्या 01/0005) के मध्य भाग में बिन्दु '21' से प्रारंभ होती है, जो दक्षिणी-पश्चिमी दिशा में मुड़ते हुए ग्राम दलदली (थाना संख्या 01/0005) के दक्षिणी-पश्चिमी भाग में बिन्दु '22' पर समाप्त होती है।
- (22) रेखा 22-23: रेखा ग्राम दलदली (थाना संख्या 01/0005) के दक्षिणी-पश्चिमी भाग में बिन्दु '22' से प्रारंभ होती है, जो दक्षिणी-पश्चिमी दिशा में मुड़ते हुए ग्राम ढोलकाटा (थाना संख्या 05/0001) के पूर्वी भाग में बिन्दु '23' पर समाप्त होती है।
- (23) रेखा 23-24: रेखा ग्राम ढोलकाटा (थाना संख्या 05/0001) के पूर्वी भाग में बिन्दु '23' से प्रारंभ होती है,

जो दक्षिणी-पश्चिमी दिशा में मुड़ते हुए ग्राम पहाड़ अमचुआ (थाना संख्या 05/0002) के उत्तर-पूर्वी भाग में बिन्दु '24' पर समाप्त होती है।

(24) रेखा 24-25: रेखा ग्राम पहाड़ अमचुआ (थाना संख्या 05/0002) के उत्तर-पूर्वी भाग में ग्राम ढोलकाटा (थाना संख्या 05/0001) और ग्राम पहाड़ अमचुआ (थाना संख्या 05/0002) की सीमा के निकट बिन्दु '24' से प्रारंभ होती है, जो उत्तर-पश्चिमी दिशा में मुड़ते हुए ग्राम कोरीगड़ (थाना संख्या 04/0032) के मध्य भाग में बिन्दु '25' पर समाप्त होती है।

(25) रेखा 25-1: रेखा ग्राम कोरीगड़ (थाना संख्या 04/0032) के मध्य भाग में बिन्दु '25' से प्रारंभ होती है, जो उत्तरी दिशा में मुड़ते हुए ग्राम कोरीगड़ (थाना संख्या 04/0032) के उत्तर-पश्चिमी भाग में बिन्दु '1' पर समाप्त होती है।

[फा. सं. 43015/16/2018-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 6th October, 2020

S.O. 898.—Whereas by notification of the Government of India in the Ministry of Coal number S.O. 1796, dated the 13th December, 2018, issued under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 22nd December, 2018, the Central Government gave notice of its intention to prospect for coal in land measuring 1510.02 hectares (approximately) or 3731.26 acres (approximately) in the locality specified in the Schedule appended thereto;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 7 of the said Act, the Central Government hereby specifies a further period of one year commencing from the 13th December, 2020 as the period within which the Central Government gives notice of its intention to acquire the said land or any rights in or over the said land specified in the Schedule appended hereto.

SCHEME

SAHARPUR – JAMARPANI COAL BLOCK

DISTRICT DUMKA, JHARKHAND

[Plan bearing number UPRVUNL/4(1)/Plan/Revenue/1, dated the 24th September, 2018]

Sl. No.	Name of village	Patwari Circle name and number	Tahesil	District	Area in hectare (approximately)	Remarks
1.	Kaurigarh	Jagatpur,32	Shikaripada	Dumka	48.53	Part
2.	Dholkata	Benagadia, 1	Shikaripada	Dumka	124.73	Part
3.	Pahar Amchua	Benagadia, 2	Shikaripada	Dumka	6.60	Part
4.	Simanijor	Haripur, 4	Shikaripada	Dumka	40.50	Part
5.	Daldali	Haripur, 5	Shikaripada	Dumka	125.14	Part
6.	Langalbhanga	Haripur, 7	Shikaripada	Dumka	49.28	Full
7.	Patpahari	Haripur, 6	Shikaripada	Dumka	47.26	Full
8.	Pokharia	Benagadia, 4	Shikaripada	Dumka	16.10	Part
9.	Majhiladih	Benagadia, 6	Shikaripada	Dumka	143.20	Part
10.	Nijhor	Benagadia, 5	Shikaripada	Dumka	87.76	Full
11.	Paharpur (Haripur)	Benagadia, 13	Shikaripada	Dumka	17.45	Part
12.	Porabansri	Benagadia, 14	Shikaripada	Dumka	16.52	Part
13.	Sarasdanga	Haripur, 12	Shikaripada	Dumka	164.44	Part
14.	Jamropani	Haripur, 11	Shikaripada	Dumka	179.70	Part
15.	Chhota Chapuria	Benagadia, 14	Shikaripada	Dumka	2.50	Part
16.	Bara Chapuria	Haripur, 15	Shikaripada	Dumka	5.09	Part
17.	Lata Kandar	Haripur, 10	Shikaripada	Dumka	13.13	Part

18.	Makrapahari	Haripur, 8	Shikaripada	Dumka	282.93	Part
19.	Hulasdanga	Haripur, 2	Shikaripada	Dumka	48.56	Part
20.	Mahulbana	Jagatpur, 25	Shikaripada	Dumka	26.05	Part
21.	Chirudih	Haripur, 3	Shikaripada	Dumka	64.55	Part
Total area :1510.02 hectares (approximately) or 3731.26 acres (approximately)						

Boundary description:

- (1) Line 1-2: The line starts at point '1' in the middle part of the Kaurigarh village (Thana Number 04/0032) trending in easterly direction passing through village Simanijor (Thana number 01/0004) and ends at point '2' in the south west part of Daldali village (Thana Number 01/0005).
- (2) Line 2-3: The line starts at point '2' in the south west part of Daldali village (Thana Number 01/0005) trending in northerly direction passing through village Simanijor (Thana number 01/0004) and Chirudih (Thana number 01/0003) and ends at point '3' in the middle part of Mahulbana village (Thana Number 04/0025).
- (3) Line 3-4: The line starts at point '3' in the middle part of Mahulbana village (Thana Number 04/0025) trending in north-easterly direction and ends at point '4' in the middle part of Hulasdanga village (Thana Number 01/0002).
- (4) Line 4-5: The line starts at point '4' in the middle part of Hulasdanga village (Thana Number 01/0002) trending in easterly direction and ends at point '5' in the middle part of Hulasdanga village (Thana Number 01/0002).
- (5) Line 5-6: The line starts at point '5' in the middle part of Hulasdanga village (Thana Number 01/0002) trending in south-easterly direction and ends at point '6' in the northern part of Makrapahari village (Thana Number 01/0008).
- (6) Line 6-7: The line starts at point '6' in the northern part of Makrapahari village (Thana Number 01/0008) trending in south-easterly direction and ends at point '7' in the middle part of Makrapahari village (Thana Number 01/0008).
- (7) Line 7-8: The line starts at point '7' in the middle part of Makrapahari village (Thana Number 01/0008) trending south-easterly direction and ends at point '8' in the north-west part of Jamropani village (Thana Number 01/0011).
- (8) Line 8-9: The line starts at point '8' in the north-western part of Jamropani village (Thana Number 01/0011) trending north-easterly direction and ends at point '9' in the south western part of Lata kandar village (Thana Number 01/0010) close to the village boundary of Lata kandar village (Thana Number 01/0010) and Jamropani village (Thana Number 01/0011).
- (9) Line 9-10: The line starts at point '9' in the south western boundary of Lata kandar village (Thana Number 01/0010) close to the village boundary of Lata kandar village (Thana Number 01/0010) and Jamropani village (Thana Number 01/0011) trending north-easterly direction and ends at point '10' in the middle part of Lata kandar village (Thana Number 01/0010).
- (10) Line 10-11: The line starts at point '10' in the middle part of Lata kandar village (Thana Number 01/0010) trending south-easterly direction and ends at point '11' in the south-eastern part of Bara Chapiria (Thana Number 01/0015) close to the village boundary of Bara Chapiria (Thana Number 01/0015) and Chota Chapiria (Thana Number 01/0014).
- (11) Line 11-12: The line starts at point '11' in the eastern part of Bara Chapiria (Thana Number 01/0015) close to the village boundary of Bara Chapiria (Thana Number 01/0015) and Chota Chapiria (Thana Number 01/0014) trending southerly direction and ends at point '12' in the north-eastern part of Sarasdanga village (Thana Number 01/0012).
- (12) Line 12-13: The line starts at point '12' in the north-eastern part of Sarasdanga village (Thana Number 01/0012) trending south-westerly direction and ends at point '13' in middle part of Sarasdanga village (Thana Number 01/0012).
- (13) Line 13-14: The line starts at point '13' in the middle part of Sarasdanga village (Thana Number

01/0012) trending south-westerly direction and ends at point ‘14’ in the south-western part of Sarasdanga village (Thana Number 01/0012).

(14) Line 14-15: The line starts at point ‘14’ in the south-western part of Sarasdanga village (Thana Number 01/0012) trending south-easterly direction and ends at point ‘15’ in the south-eastern part of Sarasdanga village (Thana Number 01/0012).

(15) Line 15-16: The line starts at point ‘15’ in the south-eastern part of Sarasdanga village (Thana Number 01/0012) trending south-westerly direction and ends at point ‘16’ in the north-eastern part of Porabansri village close to the village boundary of Porabansri village (Thana Number 05/0014) and Sarasdanga village (Thana Number 01/0012).

(16) Line 16-17: The line starts at point ‘16’ in the north-eastern part of Porabansri village (Thana Number 05/0014) close to the village boundary of Porabansri village (Thana Number 05/0014) and Sarasdanga village (Thana Number 01/0012) trending westerly direction passing through Paharpur (Haripur) village (Thana number 05/0013) and ends at point ‘17’ in the eastern part of Majhiladih village (Thana Number 05/0006).

(17) Line 17-18: The line starts at point ‘17’ in the eastern part of Majhiladih village (Thana Number 05/0006) trending north-westerly direction and ends at point ‘18’ in the western part of Majhiladih village (Thana Number 05/0006).

(18) Line 18-19: The line starts at point ‘18’ in the western part of Majhiladih village (Thana Number 05/0006) trending north-westerly direction and ends at point ‘19’ in the middle part of Pokharia village (Thana Number 05/0004).

(19) Line 19-20: The line starts at point ‘19’ in the middle part of the Pokharia village (Thana Number 05/0004) trending north-easterly direction and ends at point ‘20’ in the south-eastern part of Daldali village (Thana Number 01/0005) close to the village boundary of Daldali village (Thana Number 01/0005) and Patpahari village (Thana Number 01/0006).

(20) Line 20-21: The line starts at point ‘20’ in the south-eastern part of Daldali village (Thana Number 01/0005) close to the village boundary of Daldali village (Thana Number 01/0005) and Patpahari village (Thana Number 01/0006) trending north-westerly direction and ends at point ‘21’ in the middle part of Daldali village (Thana Number 01/0005).

(21) Line 21-22: The line starts at point ‘21’ in the middle part of Daldalivillage (Thana Number 01/0005) trending south-westerly direction and ends at point ‘22’ in the south-western part of Daldali village (Thana Number 01/0005).

(22) Line 22-23: The line starts at point ‘22’ in the south-western part of Daldali village (Thana Number 01/0005) trending south-westerly direction and ends at point ‘23’ in the eastern part of Dholkata village (Thana Number 05/0001).

(23) Line 23-24: The line starts at point ‘23’ in the eastern part of Dholkata village (Thana Number 05/0001) trending south-westerly direction and ends at point ‘24’ in the north-eastern part of Pahar Amchua village (Thana Number 05/0002).

(24) Line 24-25: The line starts at point ‘24’ in the north-eastern part of Pahar Amchua village (Thana Number 05/0002) close to village boundary of Dholkata village (Thana Number 05/0001) and Pahar Amchua village (Thana Number 05/0002) trending north-westerly direction and ends at point ‘25’ in the middle part of Kaurigarh village (Thana Number 04/0032).

(25) Line 25-1: The line starts at point ‘25’ in the middle part of Kaurigarh village (Thana Number 04/0032) trending northerly direction and ends at point ‘1’ in the north-western part of Kaurigarh village (Thana Number 04/0032).

[F. No. 43015/16/2018-LA & IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 सितम्बर, 2020

का.आ. 899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, सूक्ष्म, लघु और मध्यम उद्यम, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 36/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.08.2020 को प्राप्त हुआ था।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th September, 2020

S. O. 899.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2013) of the Central Government Industrial-Tribunal-cum Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Micro, Small & Medium Enterprises, Bangalore & Others, and their workmen which were received by the Central Government on 31.08.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 18TH AUGUST, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 36/2013

I Party

Sh. Prabhu,
S/o Shivappa Kubasad,
R/o Maruti Circle,
5th Cross, Nekar Nagar,
Old Hubli,
Hubli - 580024.

II Party

1. The Management Micro, Small & Medium Enterprises,
Ministry of Micro, Small & Medium Enterprises,
Government of India,
Rept by its Joint Development Commissioner,
Nirmanbhawan, 7th Floor, Maulana Azad Road,
New Delhi - 110108.
2. The Management Micro, Small & Medium Enterprises,
Rept by its Assistant Director,
M S M E Development Institute,
Industrial Estate, Gokul Road,
Hubli - 580030.
3. The Management Micro, Small & Medium Enterprises,
Rept by its Deputy Director (Met)/Adm,
M S M E Development Institute,
Industrial Estate, Gokul Road,
Hubli - 580030.

Appearance

Advocate for I Party : Mr. Anant P. Savadi

Advocate for II Party : Mr. A. F. Rayappanavar

AWARD

1. It is a petition filed by an individual workman (1st Party) under Section 2-A of the Industrial Dispute Act, 1947 (for brevity ‘the Act’) against his erstwhile employer (2nd Party).

2. The case of the 1st Party is,

He was appointed as Electrical Operator in the year 1996 as a daily wager and worked continuously and uninterruptedly, till he was illegally terminated on 31.03.2013; before termination he was not issued any notice / charge sheet and no enquiry was conducted against him. On 31.03.2013 when he attended the duty he was orally told not to attend the duties from then onwards, without assigning any reasons he was terminated which amounts to illegal retrenchment. Now he is brought to streets with his family members and is jobless; he is age barred and there is no chance of getting any job.

3. The claim is contested by the 2nd Party on the following grounds:

they have not appointed the 1st Party as Electric Operator, the Electrical maintenance of their office is maintained by Executive Engineer (Electrical) Central Public Works Department, Bangalore; the entire claim statement allegations are rejected as false. Since, he was not engaged by the 2nd Party question of termination does not arise.

4. On the above pleading following issues are framed :

1. Whether applicant proves that in the year 1996 he was engaged as a daily wager by the respondents and since then uninterruptedly he worked till 31.03.2013 as claimed by him?
2. Whether applicant proves that on 31.03.2013 his services were orally terminated abruptly as claimed by him?
3. If so whether respondent justifies such termination w.e.f. 31.03.2013?

5. Both parties adduced evidence. The 1st Party workman examined himself as WW-1 and marked documents Ex W-1 to Ex W-7.

Rebuttal evidence is adduced by MW-1 / Assistant Director of the 2nd Party and documents Ex M-1 to Ex M-16 are marked.

Both have submitted their written argument.

6. To demonstrate his employment with the 2nd Party the 1st Party workman has produced Photostat copy of the Certificate of Verification issued by Junior Engineer (Electrical) of the 2nd Party Ex W-1; Ex W-2 Photostat copy of the Attendance Verification Register verified by Assistant Director for the period October 2008 to 01.03.2013; Ex W-3 to Ex W-5 are the photos taken in the premises of the 2nd Party; Ex W-6 is his Certificate of Training issued by the Small Industries Development Organisation; Ex W-7 is the Certificate of Participation issued for his participation on behalf of 2nd Party by Rotary Club of Bijapur in the Krishimela held during January 2010.

During his cross examination it surfaced that he was not issued Appointment Order and he had not applied for the job also – the employees in the office of the 2nd Party would put their signature in a common Attendance Register, separate Attendance Register was maintained for the 4 casuals, these casuals were not signing in the Attendance Register but were given attendance in the Register. They were paid wages in cash without taking vouchers.

7. Rebuttal evidence is adduced by MW-1 reiterating counter statement averments. The documents produced by them pertain to sanction of office building and quarters for 2nd Party, including Electrical and Civil Works - the Sanction to incur the expenditures in respect of those works - Delegation of financial powers to field offices of DC (MSME) for outsourcing of certain services (Ex M-14) - Calling for tenders from the Service Agency for Watch and Ward and Housekeeping (Ex M-15) - Duty hours and the Wage details pertaining to Watch and Ward Personnel and Housekeeping Personnel (Ex M-16).

During the cross examination of MW-1 he admits that, 1st Party was working in their office as Office Boy and was hired through Contractor. However, the witness expressed ignorance about his continuous service

between 1996 to 2013 as a Generator Maintenance Boy, and also to attend the regular works of the office. He did not admit the genuineness of the Attendance Register / Ex W-2; he identified the 1st Party workman in the Digital Photo Ex W-3 to Ex W-5.

8. The burden is on the workman to prove his appointment, service and illegal retrenchment. From the cross-examination evidence of MW-1 it can be inferred that he was not a stranger to the 2nd Party though they are disputing his identity. The problem here to accept the claim of the 1st Party workman in its entirety is, he has not applied for a job, he is not given appointment order and he has not passed on voucher while receiving wages by way of cash. He had called upon the 2nd Party to produce original NMR, Wage Register and Correspondence papers. The 2nd Party submitted that at no point of time they maintained such documents. The so called Photostat Copy of the Attendance Register produced by him as Ex W-2 does not bear his signature; his own document Ex W-1 which is a Certificate of Verification issued by Junior Engineer would read that he carried out the work of maintenance of Internal Electrical Installation at *Small Industries Service Institute Building at Gokul Road, Hubli (2nd Party)* through contract vide 9 work orders detailed therein. This document is dated 28.12.1998 and does not detail the specific dates on which he attended the works. However, as per this certificate he has worked for a period ranging 3-5 months in respect of each work order. That destroys his own case that also answers his presence in the premises of the 2nd Party as reflected in the photographs Ex W-3 to Ex W-5. The work orders issued to him is in consonance with the sanction approved by the Ministry of Micro, Small and Medium Enterprises, Government of India for executions of the works in the 2nd Party Institute (as per Ex M-1). The 1st Party failed to prove the employee employer relationship with the 2nd Party and thus there is no question of addressing his illegal retrenchment. Hence, answer to the above issues 1 to 3 goes against him. The authorities relied by him would have come to his aid had if his relationship with the 2nd Party and his continuous service therein was established.

AWARD

The petition is dismissed.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 18th August, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2020

का.आ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, हिमालयन बायोरसोर्स प्रौद्योगिकी संस्थान, चंडीगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 101/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डॉ. के. हिमांशु, अवर सचिव

New Delhi, the 25th September, 2020

S. O. 900.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 101/2015) of the Central Government Industrial-Tribunal-cum Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Institute of Himalayan Bioresource Technology, Chandigarh & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sh. A.K. Singh, Presiding Officer**ID No.101/2015**

Registered On:-27.02.2015

Parveen Kumar S/o Dev Raj, through R.K. Singh Parmar, General Secretary,
 Punjab INTUC L-211, Brari, P.O. Partap Nagar, Nangal, Tehsil Nangal,
 Distt. Rupnagar (Punjab).

...Workman

Versus

1. Director Institute of Himalayan Bioresource Technology,
 (CSIR Complex) Palampur, Distt. Kangra (Himachal Pradesh).
2. Rajiv Sood (Govt. Contractor), S/o Sh. Jyoti Ram, R/o VPO Paprola,
 Tehsil Baijnath, Distt. Kangra (Himachal Pradesh).

...Respondents

ORDER**Passed on:-11.06.2020**

1. The workman has directly moved this application under Section 33-A of the Industrial Disputes Act, 1947, alleging therein that he was employed with the defendant-management since long and in violation of the provisions of Section 33 of the Industrial Disputes Act, 1947 he has been terminated from service by the defendants/respondents vide oral order dated 28.11.2014 during the pendency of the file bearing ID No.255/2013. Hence, it is prayed by the claimant/workman that this Tribunal may be pleased to decide the complaint set out above and pass suitable orders as it deems fit and proper.
2. Respondent No.1 i.e. Director Institute of Himalayan Bioresource Technology, (CSIR Complex) Palampur, Distt. Kangra (Himachal Pradesh) has not filed its reply/written statement and was proceeded ex parte on 28.07.2016.
3. Respondent No.2 i.e. Rajiv Sood (Govt. Contractor) has filed its reply/written statement, alleging therein that the answering respondent is a registered contractor and is working with respondent no.1 since 1986 on the basis of agreement/contract for the specific period and the workman has never worked with the answering respondent and has not violated Section 33 of the Industrial Disputes Act, 1947.
4. During the pendency of the proceedings before this Tribunal, workman did not turn up at the stage of evidence, compelling the learned AR of the claimant Sh. R.K. Parmar to averred that the workman has not turning for submitting the evidence in spite of the information and order be passed accordingly.
5. Perusal of the file reveals that application is pending at the stage of the evidence of the workman for a long time but he is not turning for submitting the evidence in spite of the information, resulting the request made by the AR that it may be dismissed.
6. In view of the statement made by the learned AR of the workman, the application is dismissed as withdrawn. Since there is no adjudication of the case on merits as such, it would not preclude the workman from filing fresh case in accordance with Law. File after completion be consigned in the record room.
7. Let hard and soft copy of the order be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2020

का.आ. 901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पोस्ट मास्टर जनरल, पुणे और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय-3, कोलाकाता के पंचाट (संदर्भ संख्या 99/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.20 को प्राप्त हुए थे।

[सं. एल-40012/134/2004-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th September, 2020

S. O. 901.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/2005) of the Labour Court No-3 Pune as shown in the Annexure, in the Industrial dispute between the employers in relation to The Post Master General, Pune, & Others, and their workmen which were received by the Central Government on 16.09.20.

[No. L-40012/134/2004-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, LABOUR COURT NO. 3 AT : PUNE

Presided Over by - SMT. MADHURA A. MULIK

Ref. (IDA) No. 99/2005

Exh. No. 144

First Party : The Post Master General,
Pune Region, C/o. PMG, Pune

AND

Second Party : Smt. Anusaya R. Dalvi,
Survey No.59-A/1,
Ushakal Housing Society, Tavade Vasti
Mohamadwadi Road, Hadapsar,
Pune 411 028.

Claim:- Reinstatement with continuity of service with full back wages alongwith other benefits from first party.

Smt. Brahme, Advocate for first party.

Shri. R. P. Shaligram, Advocate for second party.

AWARD

[Delivered on :- 20/08/2020]

1) This Reference is sent by Government of India, Ministry of Labour, to this Court for adjudicating the points that,

"Whether the action of the management of Sr. Supdt. Of Post Office City (West Divn) Pune in terminating the service of Smt. Anusaya R. Dalvi by way of removal vide Order dated 8/11/2000 and then modifying the said punishment as compulsory retirement vide order dated 28-29/10/2002 is illegal, proper and justified ?" If not, to what relief the concerned workman is entitled to and from which date and what other direction are necessary in the matter?"

In pursuance of Reference Order notices issued to the parties. Accordingly, the second party appeared and filed her statement of claim at **Exh. 5.**

2) **Brief facts of the case :-**

The second party pleaded that she worked as 'Post Woman' with First Party. The second party was transferred to Guruwar Peth, Post Office and she resumed duty in year 1984 as 'Stamp Vendor'. The duties of Stamp Vendor are only sell stamp/stationery and grant certificates of posting. The stamp vendor is supposed to sell the stamps upto Rs.30/- to any individual and the sell of more than Rs. 30/- which is treated as Bulk Sale is to be done only by said post master of the said post office. It is submitted that, the as per routine procedure, everyday morning the stamp vendor has to take the stamps and other stationery worth Rs. 2,000/- of different denominations from the post master, at the time the stamp vendor also takes the money order forms, worth Rs.10/-. If any members of public desires to purchase stamp more than Rs.30/-, has to inform the same to the post master. Post master gives the required quantity of postal stamps to the stamp vendor and the stamp vendor hands over the stamps to the customers after accepting the money from the customer.

3) The second party has made certain allegations against Mr. Raskar, Postal Assistant was officiating post master. It is further contended that Advocate Shinde used to purchase stamp from post office in bulk purchase and there used to be credit transactions with consent of postmaster of Guruvar Peth Post Office. The second

party had no reason to interfere. It is submitted that, on 22/05/1998 the second party attended to her duty. At that time Senior Superintendent of post office visited the post office and immediately took the charge of stamp box and carried inspection. After inspection the first party issued the charge-sheet to the second party. The charges levelled against the second party are such that there was a short cash of Rs.2919.85 out of sale of postage stamp of Rs. 5860/- . Likewise, it is alleged that there was utter negligence and carelessness in her duty with lack of sense of integrity. It is alleged that she failed to maintain the register of stamp of her Branch and did not put before the Superintendent of post master. Thereafter, immediately on 12:00 with immediate effect the second party was suspended. After 1 month the said suspension order was revoked and the second party was allowed to resume duty. The second party joined the office w.e.f. 25/06/1991.

4) The second party by submitted reply to charge-sheet & denied all the allegations levelled against her. Thereafter first party initiated departmental enquiry against her. The enquiry officer submitted the enquiry report dtd.22/03/2000. The enquiry officer held second party responsible only for the amount of Rs.268.85/- in respect of charged article 1. Thereafter, by letter dtd.27/03/2000 the first party has informed that the disciplinary authority dis-agrees with the enquiry officer and have asked the second party to submit her representation on the findings of the enquiry officer. Thereafter authority letter dtd.13/07/2000 the enquiry officer has informed the second party to remain present for denovo trial on 27/07/2000. As per directions of enquiry officer the second party attended the denovo enquiry wherein the enquiry officer had ask some questions to the second party. The enquiry officer submitted his enquiry report on 03/10/2000. The enquiry officer has not followed proper procedure of the enquiry. Thereafter, she was removed from service vide letter dtd.08/11/2000. The first party vide letter dtd.28/-29/10/2002 had modified the order dtd. 08/10/2000 and 12/10/2001. The punishment of compulsory retirement is imposed on the second party. The past record of the second party was totally unblemished. Lastly, the second party prayed for reinstatement with continuity of service and full back wages.

5) The first party appeared in present matter and filed its written at Exh.12, wherein all contentions of second party are totally denied. It is submitted that, issuance of certificate of posting is vested with the clerk of said department. It is denied that, the stamp vendor is supposed to say the stamp up to Rs.30/- and the sale of more than Rs.30/- is treated as bulk sale and is to be done by sub post master of said post office. It is submitted that, during the day whenever stock of stamps of specific denomination is exhausted then sale amount of required stamp is to be deposited by vendor with post master or treasurer. As per the rules any stamp vendor has to maintain the register.

6) It is submitted that, during surprise visit of SSPO Pune City, the cash and stamp balance with second party was checked and found short by Rs.2919.85/. The said amount was immediately shown in the account of UPC. The second party failed to give satisfactory reason for the said shortage. The shortage was admitted by the second party in writing voluntarily and she thereafter credited amount voluntarily. The disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 initiated against the second party vide order dtd.16/06/1998. The enquiry was conducted against the second party as per existing Rules and Regulations and by observing the principles of natural justice. The full opportunity of being heard was given to second party. During the enquiry proceeding the charges were proved against her and thereafter, considering the facts and circumstances and evidence on record the second party removed from service vide order dtd. 08/11/2000. Thereafter, the second party has preferred appeal against the punishment inflicted against her. Which was rejected by Appellate Authority. Thereafter, the second party has preferred petition to the Chief Post Master General, Maharashtra Circle, Mumbai and from the humanity point of view the punishment was modified to compulsory retirement by order dtd. 29/10/2002.

7) It is submitted that, since punishment was modified by the Competent Authority from removal from Government service to compulsory retirement from Government Service and thereby second party should not deprive of other benefits. The punishment awarded to second party is legal and proper. Therefore, it is prayed to reject the reference.

8) On rival pleadings of the parties my Ld. Predecessor has framed issues at Exh.16. In which issue No. 1 & 2 in respect of maintainability of reference are already decided as a preliminary issues and also issue No. 3 & 4 regarding enquiry and perversity of findings of enquiry officer have decided on 17/08/2018. Now remaining issues are for my consideration, those are reproduced below. I have recorded my findings thereon for the reasons thereof as below.

<u>ISSUES</u>	<u>FINDINGS</u>
1 Whether the Reference is maintainable?	... In the affirmative by P.P. order on 02/02/2011.
2 Whether the first party is an 'Industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947?	... In the affirmative by P.P. order on 02/02/2011.
3 Whether the enquiry conducted by the first party is	...In the negative

legal, fair and proper?

4 Whether the evidence before the enquiry officer was insufficient to prove the misconduct and whether the findings of the enquiry officer are perverse?

5 Whether the evidence before the court is sufficient to prove the misconduct?

6 Whether the termination of the second party is illegal/unjustified?

7 Whether the second party is entitled to the reliefs claimed for?

8 What Award?

by P.P. order on 17/08/2018.
...In the negative.
by P.P. order on 17/08/2018.

... In the Affirmative
... In the negative
... In the negative
... Reference is answered in the negative

REASONS

9) The first party to prove the charges levelled against the second party before the Court examined its witnesses namely Shri. S.B. Kulkarni at Exh. 116, Shri. S.K. Raskar at Exh. 124 and Shri. S.K. Jadhav at Exh. 131. The first party relied upon following documents -

Sr. No.	Particular of Documents	Exhibits
1.	Attested xerox copy of first party and second page of service book of Smt. A.R. Dalvi	33
2.	Attested xerox copy of appointment of Smt. A.R. Dalvi as a Stamp Vendor, Guruwar Peth P.O. w.e.f. 03/02/1986	34
3.	Attested xerox copy of visit remarks of Guruwar Peth P.O. dated 22/05/1998 by Sr. Supdt. Of Post Offices, Pune City West Dn. Pune 411 030.	35
4.	Attested xerox copy of Hand-to-Hand book of stamp vendor of Guruwar Peth P.O. dated 22/05/1998.	36
5.	Attested xerox copy of postal stamp and stationary book of Guruwar Peth P.O. dated 12 to 22/05/1998	37
6.	Attested xerox copy of Error Book Entry dated 22/05/1998 of Guruwar Peth P.O.	38
7.	Attested xerox copy ACG-67 (Un-classified Receipt) No. 03037/85 Dtd. 22/05/1998 of Guruwar Peth P.O.	39
8.	Attested xerox copy of Sub Office Daily Account of Guruwar Peth P.O. for month of May 1998.	40
9.	Attested xerox copy of statement of Smt. A.R. Dalvi Stamp Vendor, Guruwar Peth P.O. dated 22/05/1998 conducted by Visiting Officer/SSPOs, PNC(W) Dn. Pune.	41
10.	Attested Xerox copy of the Suspension Order Memo No. ASP/TSO(I)/PF/ARD/Suspension/98 dtd. 22/05/1998.	42
11.	Attested xerox copy of the relieving charge report dtd. 22/05/1998 of departmental stamp vendor of Guruwar Peth P.O.	43
12.	Attested xerox copy of the report addressed to SSPOs. From ASP TSO(I), Pune City West Dn.	44
13.	Attested Xerox copy the charge sheet dtd. 16/06/1998 issued vide Memo No. ASP/TSO(I)/PF/ARD/98.	45
13.	Attested Xerox copy the Rule 45 of Postal Manual Vol. VI, Part I page 52 to 55.	46
14.	Attested Xerox copy of Rule 3(1)(i)(ii)&(iii) of Central Civil Services (Conduct) Rules, 1964.	47
15.	Attested Xerox copy of order of Suspension Revoke vide memo No. ASP/TSO(I)/PF /ARD/Suspension/98 dtd. 22/06/98.	48

16.	Attested xerox copy of sanction of suspension allowance vide memo ASP/TSO(I)PF/ARD/ Suspension/98 dtd. 22/06/98.	49
17.	Attested xerox copy of joining charge report dtd. 25/06/98 for postman, Navsahyadri P.O., Pune.	50
18.	Attested xerox copy of letter No. F2/ARD/Susp./VR/98 Dtd. 19/08/98 for Permission to appoint IO & PO.	51
19.	Attested Xerox copy of letter dated 02/09/1998 for appointment of enquiry officer.	52
20.	Attested xerox copy of letter dated 02/09/1998 for appointment of Presenting Officer.	53
21.	Attested xerox copy of set of enquiry report case in respect Smt. A.R. Dalvi.	54
22.	Attested xerox copy of the letter dated 09/10/2000 to Smt. A.R. Dalvi from No. ASP/TSO-I, Pune City West Dn. Pune.	55
23.	Attested Xerox copy of the representation received from Smt. A.R. Dalvi in response to letter Dtd. 09/10/2000.	56
24.	Attested xerox copy of the punishment order issued vide memo No. F2/ARD/Susp/VR/98, Dtd. 08/11/2000.	57
25.	Attested xerox copy of the charge report dtd. 14/11/2000 and letter of sub-postmaster, Navsahyadri P.O. Pune 411052 to Smt. A.R. Dalvi.	58
26.	Attested xerox copy of the letter dated 22/12/2000 from Smt. A.R. Dalvi to SSPOs., PNC (W) Dn. Pune 30	59
27.	Attested xerox copies of Appeal preferred by Smt. A.R. Dalvi.	60
28.	Attested Xerox copy of order of Appellate Authority vide No. PR/Staff-I/20/05/2001 Dtd. 12/10/2001.	61
29.	Attested xerox copy of Petition/Review Appeal Dtd. 03/11/2001 preferred by Smt. A.R. Dalvi.	62
30.	Attested xerox copy of Order No. STA/44-2(06/69)01/01/02 Dtd. 28/29-10-02 for Modification of Punishment from removal to compulsory retirement.	63
31.	Attested xerox copy of the letter dated 21/11/2002 from Smt. A.R. Dalvi to SSPOs., PNC(W) Dn., Pune 30.	64
32.	Attested Xerox copies of the Pension Payment Order and DCRG Payment received from Director of Accounts (Postal) Maharashtra Circle, Nagpur.	65
33.	Attested Xerox copies of the revised pension payment statement issued by Sr. Post Master, Pune City H.O. Pune being a Disbursing Officer.	66

10) On the contrary the second party examined herself at Exh. 135. She has not produced any documentary evidence in support of her contentions.

11) The Ld. Adv. for Second Party argued matter in length and the first party submitted its written notes of argument. Thereafter matter is kept for further argument on citation. Thereafter on 07/08/2020 both the parties have produced pursis at Exh. 142 and 143 stating that they have argued the matter at length, the first party has submitted written notes of argument at Exh. 138. Both the parties have closed their argument by submitting above mentioned pursis.

12) Perused written notes of argument produced by the first party.

AS TO ISSUE NO. 5, 6, 7 & 8 :-

13) All these issues are interlinked with each other hence, they are discussed altogether. These issues are regarding whether the first party prove misconduct of the second party before the Court, about alleged illegal termination of the second party and regarding the relief claimed by the second party.

14) Admittedly second party was working with first party as a post woman and thereafter as stamp vendor. She was served with charge sheet dated 16.06.1998 for the alleged misconduct of utter negligence and

carelessness in duty with lack of sense of integrity and devotion to Govt. duty and acted as un-becoming of Govt. servant and thereby contravened the provisions of Rule 45 (5) of Postal Manual Volume VI part I and Rule 3 1(i), (ii), and (iii) of the CCSC (conduct) Rules, 1964. The second party by raising present dispute challenged action of the management i.e. first party in terminating her services by way of removal vide order dated 08/11/2000 and then modifying the same punishment as compulsory retirement vide order dated 28/29-10-2002.

15) On the rival pleadings of the parties issues have been framed at Exh. 16, amongst them issue No. 1 and 2 regarding maintainability of present reference have been decided affirmatively vide order dated 02/02/2011, wherein it is held and declared that the reference is maintainable and the first party is an industry within the meaning of Section 2(j) of the I.D. Act. The issue No. 3 and 4 regarding legality fairness and propriety of the enquiry and regarding perversity of the findings of the enquiry officer have been decided by order dated 17/08/2018, wherein it is held and declared that the enquiry conducted against the second party is not legal, fair and proper and not in accordance with the principal of natural justice, findings are perverse, hence said enquiry stands vitiated.

16) In all cases where the domestic enquiry conducted is defective or the findings rendered at the domestic enquiry are perverse, the employer is entitled to adduce additional evidence to satisfy the Tribunal that the order of discharge or dismissal is justified. The first party in its written statement made specific prayer to that effect. Having consideration of prayer of first party and as per settled position of Law when this Court come to the conclusion and vitiated the enquiry conducted against the second party, opportunity has been offered to the first party to prove the charges of misconduct levelled against the Second party before the Court. Accordingly the first party adduced its evidence.

17) Before going through the oral evidence produced on record by both the parties, it is required to go through the actual charges of misconduct levelled against the second party. On perusal of charge-sheet dated 16/06/1998 which is at Exh. 45, it has been observed that on 22/05/1998 on surprise visit of Senior Superintendent of Post Offices the sum of Rs. 2919.85 found short out of postage stamp advance balance of Rs. 5860/-, possessed by the second party in her official capacity. Further the second party failed to count the balance of postage stamp advance, possessed by her in her official capacity on 20/05/1998 and 21/05/1998 at the close of counter hours and also failed to maintain the register of balances of postage stamp advance of her branch and accordingly not put forth before the S.P.M., Guruwar Peth, Pune for verifying the balances of postage stamp advance possessed by her at the close of counter hours. Thus, she contravened the provisions of Rule No. 45(3) & (5) of the Postal Manual Volume VI Part I and Rule No. 3.1(i), (ii) & (iii) of the C.C.S.(Conduct) Rules, 1964. The first party conducted departmental enquiry into said charges and after considering the report/finding of the Enquiring Authority, the Sr. Superintendent of Post Offices by the virtue of powers conferred by the Rule 12 of C.C.S.(C.C.A.) Rules, 1965 ordered that the services of the second party be removed with immediate effect.

18) The copy of termination order dated 08/11/2000 is at Exh. 57. Record also shows that being aggrieved with said decision, the second party preferred an Appeal before the Appellate Authority. The copy of appeal is at Exh. 60. The Appellate Authority by its order dated 12/10/2001 which is produced at Exh. 61 confirmed the termination order and the said Appeal was rejected. Further being aggrieved with the decision of the Appellate Authority, the second party preferred Petition/Review appeal dated 03/11/2001, copy of petition is produced at Exh. 62 and the Reviewing Authority came to the conclusion and has taken following decision-

The charge involves integrity and public trust and it is difficult to entrust the person with work, involving public confidence such as vending stamps or delivering of mail. The punishment is in order, but taking a lenient view in the light of petition preferred, it is modified as compulsory retirement.

Thus, punishment of dismissal modified as compulsory retired. As mentioned earlier by raising present dispute the second party challenged her termination order dated 08/11/2000 and final order of compulsory order dated 28/29-10-2002.

19) As enquiry conducted against the second party stands vitiated, the first party to prove the charges of misconduct levelled against the second party examined its first witness Shri. S.B. Kulkarni at Exh.116. Witness Kulkarni deposed that he worked as Senior Superintendent of Post Office of Pune City West Division since 06/11/1997 to 04/10/1998. Being senior superintendent it was his part of duty to visit various post offices under his administrative jurisdiction and submit visit report thereof. Further he deposed that on 22/05/1998 he paid surprise visit to Guruwar Peth Post Office, Pune. He verified cash and balances of stamps of said post office and found Rs. 2919.85 short with the stamp vendor i.e. second party. The amount found short was shown to unclassified payment on same day. The remark regarding short amount was passed in the Sub-office account of

Guruwar Peth Post Office duly signed by him. He further deposed that he found that stamp and stationary of Rs. 3850/- were given to said stamp vendor by Sub-post Master as per request. The S.P.M. had made a note in his rough book having giving the stamps and stationary of Rs. 3850/- to the second party which was also agreed by her. However, she did not give said stamps to S.P.M.. Hence the amount of shortage found with her was credited by her voluntarily to Government Account under head Unclassified Receipt. This witness has recorded statement of the second party on same day. As per this witness she has given voluntary statement. The said statement is at Exh. 41. Further the second party asked the permission to deposit amount which was found in short in cash balance. After granting permission she credited the said amount and accordingly the receipt is also issued to her. Further this witness reported the incidence to Higher Authorities. His report is at Exh. 35. It has come on record from the cross-examination of this witness that whatever short amount found with the second party, this witness permitted her to deposit the same as per her written request.

20) The second witness of the first party Shri. S.K. Raskar examined at Exh. 124. He deposed that on 22/05/1998 he was holding the charge of Sub-post Master at Guruwar Peth Post office Pune. Further he has narrated the incidence same as deposed by witness No. 1 of the first party Shri. Kulkarni. Further he added that the amount of misappropriation found with the second party was got credited by her voluntarily. He further deposed that the second party has shown utter negligence and carelessness in her official duty with lack of sense of integrity and devotion to duty, she misappropriated the amount and acted unbecoming of Government Servant, but in cross-examination he stated that he has no idea about the charge of misappropriation levelled against the second party.

21) The witness No. 3 of the first party Shri. Jadhav examined at Exh. 131. He has deposed that he is in service of postal department since 1982. He further deposed that his office calculate the pension and other retirement benefit likes P.F., Gratuity etc from past record of the employee. He further deposed that the second party after her compulsory retirement wrote a letter dated 21/11/2002 to S.S.P.Os.P.N.C.(West) Dn., Pune-30 and requested to sent her pension form. The said letter is at Exh. 64. Thereafter she has voluntarily submitted pension forms and fulfilled other required documents for the retiral benefits. Thereafter her pension payment order dated 07/04/2003 and DCRG Payment has been received from Director of Accounts(Postal) Maharashtra Circule, Nagpur to Pune Office. The said order is at Exh. 65. He further deposed that the second party from 14/11/2000 was receiving pension of Rs. 1275 + Dearness relief. She has also received Rs. 44,109/- towards gratuity and Rs. 10854/- towards CGEGIS and received P.F. also. Time to time her pension was revised and as on today she is getting pension of Rs. 9000/- + D.R..

22) As against, the second party examined herself at Exh. 135. Her affidavit in chief is nothing but replica of facts and circumstances mentioned in her statement of claim. It is strongly argued by the Learned Advocate for the second party that the charges of utter negligence and carelessness in duty are levelled against the second party, but the evidence produced by the first party management before this Court crossed its limit and the first party tried to put up on record that the second party indulged in act of misappropriation. It is further argued that whatever the first party tried to prove are not the charges levelled against the second party. The amount found in short with the second party. It may be negligence on her part but cannot be termed as act of misappropriation. It is further argued that nothing is on record to show that it was fraud. As against, it is argued for the first party that the evidence produced by the first party before the Court is sufficient to prove that the conduct of second party was nothing but utter negligence and carelessness of her office duty with lack of sensc of integrity and devotion to duty and acted unbecoming of Government Servant.

23) The written synopsis of the argument filed by the first party shows that it places emphasis on Rule 3(1) and Rule 3-C(23) of C.C.S.(Conduct) Rules. On this point the Learned Advocate for the second party pays my attention towards Rule 3 – C(23) of the C.C.S.(Conduct) Rules, 1964 and argued that this Rule provides for acts and conducts which amounts to misconduct, but the charge-sheet was not issued to the second party for any of the conduct as mentioned in this Rule 3 – C(23) of the C.C.S.(conduct) Rules, 1964, but it was issued under Rule 3.1. It is further argued for the second party that it was only utter negligence on the part of the second party which is not covered in Rule 3.1(i)(ii)&(iii) of C.C.S.(Conduct) Rule, 1964. It appears that it is only counter argument of the second party and she has no grievance about issuance of charge-sheet under this Rule. I have carefully gone through all these provisions. Rule 3 provides -

3. General (I) Every Government servant shall at all times -

- (i) maintain absolute integrity;**
- (ii) maintain devotion to duty; and**
- (iii) do nothing which is unbecoming of a Government servant.**

Rule 45(3) and (5) of Postal Manual Volume IV Part I are regarding sale of stamps and reply-coupons and memo of stamp advances. **Rule 23** provides for Acts and conducts which amounts to misconduct. It is seen from **Rule 24** regarding cases of trivial nature that Rule 3(1) of the C.C.S.(Conduct) Rules 1964 serves the specific purpose of covering acts of misconduct not covered by other specific provisions of the Rules.

24) It has been observed that the second party raised certain allegations against Mr. S.K. Raskar, Postal Assistant. She has deposed that the behaviour of Mr. Raskar was not good with the second party. Further one Advocate Shinde's Office was situated near to the Post Office and it was routine, though illegal to give stamps and other stationary on credit to Advocate Shinde or person sent by him. Mr. Raskar was following this illegal procedure for years together. The second party was helping Mr. Raskar in addition to her work and hence she could not write/maintain the balance register on 20/05/1998 and 21/05/1998. Further she deposed that on 22/05/1998 Shri. Dhumal a clerk of Adv. Shinde come for bulk purchase and he had purchased the stamps and other stationary in bulk quantity directly from Mr. Raskar, who was then the officiating Post Master at that time. She further deposed that stamp and stationary of Rs. 2919.85 were solely given by Shri. Raskar to Shri. Dhumal. She further deposed that as per Rules of Postal Department itself the stamp vendor does not have the authority to make any bulk sale beyond Rs. 30/- It has been observed that the second party tried to bring on record that for incidence dated 22/05/1998 Mr. Raskar was responsible and the first party illegally taken action against the second party. It is pertinent note here that Shri. Raskar stepped into witness box and deposed regarding incidence dated 22/05/1998. Though the second party has made various allegations against Shri. Raskar and tried to show involvement of Shri. Raskar in incidence dated 22/05/1998, surprisingly this witness is not cross-examined by the second party on said allegations. If there was involvement of Shri. Raskar in issuing advance stamp or stationary to Shri. Dhumal then the second party would have cross-examine the witness on that point. Further she deposed that the said Shri. Dhumal had come to deposit amount of Rs. 2919.85 and said amount was received by Shri. Raskar himself. It is seen that though this stand is taken by the second party she has neither adduced any supporting evidence to that effect nor by cross-examining Shri. Raskar she brought on record this fact.

25) It has been observed that on the day of incidence the second party submitted her explanation wherein she has specifically admitted that the amount of Rs. 2919.85 found short with her. Further she has submitted that she has given 127 registered tickets/stamp and inland letters of Rs. 1,000/- to one Shri. Dhumal, Advocate known to her without receiving any amount for that. Further she has submitted that due to crowd she never made entries to the register. Further mentioned that she is giving explanation voluntarily and without any force / pressure on her. It is seen that in this explanation she admitted her guilt and begs pardon, further she prayed that one opportunity be given to her.

26) The witness No. 1 for the first party Shri. Kulkarni is eye-witness of the incidence. He deposed specifically about the incidence before the Court. It is revealed that nothing is extracted from the cross-examination of this witness to disbelieve his contention. Further evidence of witness No. 2 for the first party Shri. Raskar corroborates the evidence of Shri. Kulkarni. Nothing is also extracted from the cross-examination of Shri. Raskar also to support the case of the second party. As mentioned earlier the second party admitted for guilt in explanation, but in her cross-examination she submitted that the underlined contents marked as 'A' in **Exh. 41** obtained from her forcefully. Further during cross-examination she submitted that she never filed any written complaint to Police or to her Senior in respect of that. The second party not produced any documentary evidence in support of her contentions. From oral as well as documentary evidence produced on record it has been observed that she has given stamp in advance to customer without receiving amount for that, this act is out of ambit of her duty. Further the amount of Rs. 2919.85 found less with her. Admittedly, thereafter she deposited said amount with department. The second party no where brought on record that she acted as per Rules provided for stamp sale. Is there any provision to give stamp on credit to purchaser/customer? She allowed said transaction at her own accord. The duty of the second party was of more responsibility where money transaction was involved. Though there are no direct charges of misappropriation, but doing such kind of transaction is not permitted. It is a case of gross negligence if she did not collect any amount of stamp sale. Regarding second charge levelled against the second party she admitted that on 20/05/1998 and 21/05/1998 entries on register not made by her. All these are seems to be irregular practice of an employee. Further the said misconduct related with the property of the first party and ultimately amounts financial misconduct which is illegal. It would be a failure to maintain absolute integrity in the first place. Secondly, it would expose an employee as a person behaving in a manner unbecoming of such an employee of the Government. It cannot be termed as minor misconduct. Above mentioned oral as well as documentary evidence clearly demonstrates that the second party committed serious misconduct. Thus, it is clear that the first party succeeded to establish the charges of misconduct levelled against the second party by adducing cogent evidence before the Court.

27) The first party in support of its contentions relied on M.L. Singla Vs. Punjab National Bank & Anr.

reported in 2018 ALL SCR 1943, wherein it is held that-

Industrial Dispute Act, 1947, S.11A- Dismissal from service-Legality- Appellant cashier in respondent bank charged for consuming liquor while on duty and also for shortage of Rs. 35,000/- found on same day- Full opportunity given to appellant at every stage of proceedings- Appellant never raised any objection complaining causing of any prejudice to him before enquiry officer – He also received all the documents relied upon by bank in support of charge-sheet – Appellant also availed opportunity of examination and cross-examination of witnesses – Reasoned report submitted by enquiry officer holding appellant guilty of both charges – No illegality to conduct of domestic enquiry – Looking to gravity of charges, order of dismissal, held proper.

I have gone through this citation. The issue involved in this case is of legality of domestic enquiry but in case in hand already this issue has been decided. Therefore, with due respect to the ratio laid down in above cited case it is my humble submission that the facts of this cited case are different than the facts of present case, hence, it is not helpful to the present case. The first party further relied on Ram Sarup Gupta (dead) by L.Rs. Vs. Bishun Narain Inter College and Ors., reported in 1987 O AIR (SC) 1242, wherein it is held that-

It is well settled that in the absence of pleading, evidence, if any produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities.

The learned advocate for the first party placed reliance on above mentioned case law and submitted that during re-examination the second party stated that if decision of this Court goes in her favour she will ready to deposit all the pension amount received by her. This stand of the second party is without pleading and it cannot be considered.

28) It is argued for the second party that it is not a case of misappropriation but mere case of negligence and charges of misappropriation are not levelled against the second party, hence, it is required to take lenient view and minor punishment be imposed on the second party. The punishment of compulsory retirement is harsh and disproportionate punishment.

29) As per Section 11-A of the I.D. Act this Court, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. It is settled that unless the gravity of the misconduct first be analysed, it is not proper to hold that punishment is disproportionate. As discussed earlier charges of utter negligence and carelessness in duty with lack of sense of integrity and devotion to Govt. duty and acted as unbecoming of Govt. servant are levelled and further those charges are categorically proved against the second party.

30) I have gone through termination order dated 08/11/2000 Exh. 57 and final order of compulsory retirement dated 28-29/10/2002 Exh. 63 which are challenged by the second party. After taking lenient view the punishment of termination converted into compulsory retirement. It is pertinent to note here that the second party preferred Appeal challenging her termination order and again preferred Petition/Review Application. The department has taken lenient view and converted her termination into compulsory retirement. It has been also observed from evidence of witness Shri. Jadhav for the first party at Exh. 131 that the second party has availed all retirement benefits such as P.F., Gratuity & DCRG Payment. Today, she is getting regular pension. The second party admitted this fact during cross-examination. After considering all these aspects I do not find any illegality in both above mentioned decisions taken by the first party. As mentioned earlier proved misconduct of the second party is major one and the first party already taken lenient view and modified the punishment, hence, it cannot be held that punishment of termination or compulsory retirement is disproportionate one. In my view it is not required to interfere in the decision of employer in present matter. Thus, it is clear that the second party failed to prove her alleged illegal termination in the hands of the first party. The second party further seeking relief of reinstatement with continuity of service and full back-wages. In view of above mentioned discussion the second party is not entitled for any relief claimed by her. Hence, I answer issue No. 5 in the affirmative, 6 and 7 in the negative and in answer to issue No. 8, I proceed to pass following award.

AWARD

- (1) The reference is answered in negative.
- (2) No order as to costs.
- (3) Inform the Government for publication of this award.

Date : 20.08.2020

Pune.

MADHURA A. MULIK, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2020

का.आ. 902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अपर महाप्रबंधक, भेल, रानीपेट चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 100/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.08.2020 को प्राप्त हुए थे।

[सं. एल-42011/61/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th September, 2020

S. O. 902.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 100/2015) of the Central Government Industrial-Tribunal - cum Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Additional General Manager, BHEL, Ranipet, Chennai & Others, and their workmen which were received by the Central Government on 14.08.2020.

[No. L-42011/61/2015-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI**

Present : DIPTI MOHAPATRA, LL.M., Presiding Officer

I.D. No. 100/2015
17.07.2020

The General Secretary
BAP Mazdoor Sangam (BMS)
Regn. No. 580/NAT
BHEL/Ranipet
Pin Code-632406

...1st Party/Petitioner Union

AND

1. The Additional General Manager
BHEL
Ranipet-632406
Tamil Nadu ...2nd Party/1st Respondent
2. The Corporate Office
BHEL House, Siri Fort
New Delhi-110049 ...2nd Party/2nd Respondent

Appearance

For the 1st Party/Petitioner : Advocates, Sri B. Rajagopal, K. Sathiyamurthi

For the 2nd Party/1st & 2nd Respondent : Advocates, M/s T.S. Gopalan & Co.

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/61/2015-IR(DU) dtd. 22.06.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of BHEL Ranipet regarding refusal for wage revision talks with representative of the Petitioner Union is justified or not? If not, what relief the Petitioner Union is entitled to?”

2. For a just adjudication a little reference to the backdrop of the case needs mention that on receipt of the above reference from the appropriate Government, the same is registered as ID No. 100/2015. The First Party, BAP Mazdoor Sangam is one of the affiliated Union to the Bharatiya Mazdoor Sangam (BMS) while files its Claim Statement both the Respondents entered appearance filing their Counter Statements separately.

3. The brief facts of the Petitioner's case is that the Office Memorandum (OM) of the Department of Public Enterprises (DPE), Ministry of Industry dtd. 14.01.1999 was issued regarding “Policy for the 6th Round of Wage Negotiation in Public Sector Enterprises”. By virtue of this OM, a Joint Committee Meeting was held in New Delhi on 12.09.2000 and an Agreement to the effect was executed for Wage Revision once in 10 years i.e. from 01.01.1997 till 31.12.2006. On expiry of the aforesaid period (30.12.2006), the First Party submitted a Charter of Demands for the next Wage Revision for a period of 5 years w.e.f. 01.01.2007. Besides, the DPE Guideline vide OM dtd. 01.05.2008 imparted instruction to fix-up the periodicity of Wage Revision for a period less than 10 years but not less than 5 years. It is averred in the Claim Statement that the Respondents did not pay heed to the claim of the Petitioner Union for fixation of the periodicity of Wage Revision once in 5 years w.e.f. 01.01.2007 nor considered the Charter of Demands to fix up the next Wage Revision to commence on 01.01.2012, on the ground of the settlement arrived at by the parties dtd. 31.12.2009 at New Delhi. Subsequently, a circular was issued on 06.02.2010 for implementing the Wage Revision for the workers w.e.f. 01.01.2007. There was no mention of fixation of periodicity of Wage Revision but reflected therein the periodicity of the Agreement will be same as that of Executives and Non-Unionized Supervisors. The further circulars implementing the Wage Revision for Executives and Non-Unionized Supervisors were silent about the periodicity of the Wage Revision. The Charter of Demands on this issue was never been attended by the Respondents. The First Party Petitioner Union accordingly approached this Forum seeking relief stating the aforesaid Agreement as not unanimous and not in consonance to the guideline of DPE dtd. 01.05.2008. Hence seeks order of direction to the Respondents to set up Wage Revision on 01.01.2012, 5 years after expiry previous Wage Revision.

4. The Respondents entered appearance and filed their respective Counter Statements. Initially the Executive Director, BHEL, Ranipet while was impleaded as sole Respondent, the First Party Union during the course of hearing impleaded the Corporate Office, BHEL, New Delhi as Second Party vide Order dtd. 07.02.2017 (arising out of the instant ID 100/2015). The pleadings of both the Respondents are almost same and common. It is pleaded that as the Petitioner Union since agreed upon to the terms of the settlement in their Memorandum of Agreement dtd. 30.12.2009 (Ext.W5), the validity period for Wage Revision is fixed to 10 years. It is further pleaded the Charter of Demands to reduce the periodicity from 10 years to 5 years has got no force. It is accordingly pleaded that the Petitioner's Union commands no merit to raise the issue.

5. Both parties in addition to their pleadings adduced oral as well as documentary evidence. One D. Venkatachalam, the General Secretary of the BAP Mazdoor Sangam, Ranipet testified as WW1 and Exhibited 10 documents as Ext.W1 to Ext.W10. Both the Respondents similarly adduced oral evidence through their respective witnesses viz. Joy Alexander, the Additional General Manager/HR, BHEL/BAP, Ranipet and Samir Mukherjee, the Additional General Manager, HR-IR and Policy Matters, Chennai as MW1 and MW2. A bunch of documents are marked through the above witnesses as Ext.M1 to Ext.M13.

6. In view of the pleadings of the parties, the evidence adduced by the witnesses and the materials borne out from the documents relied on so also the argument and counter argument advanced by the respective parties, the following issues are found to be emerged in :

Issues

- (i) Whether the action of the Management by not allowing a discussion with the Petitioner Union for fixation of Wage Revision once in 5 years - is justified?
- (ii) Whether the First Party Petitioner Union is entitled to the relief as sought for?

Since the issues are interlinked, inter-alia taken up together for a convenient discussion.

7. Undoubtedly, the Second Respondent is a Government Undertaking Sector and a manufacturer of major integrated power plant equipment having 17 manufacturing units across the country. The Ranipet unit is one among it. It is also an undisputed admitted fact that in order to settle the wage revision or any policy decision with regard to the benefits of the employees, the matters in issue are taken up to the Forum of "Joint Committee of BHEL" wherein the Authorized Representatives of the Unions of all units and the responsible Competent Officers of Director and Functional Directors on behalf of the Respondent are the members of the Joint Committee. Any consensus arises out of it is sent to the Appropriate Authority for approval and the circular is issued following the approval. The relevant averments of the Counter Statements of Respondents are referred.

8. Admittedly, the reference dtd. 22.06.2014 to adjudicate the Industrial Dispute raised by the First Party Petitioner's Union was received by this Tribunal during the month of July, 2015. The First Party Union through their General Secretary filed their Claim Statement seeking specific relief to pass necessarily order directing the Respondent Management to implement the revised wages from 01.01.2012 with further consequential relief as deems fit.

It is contended in the Claim Statement that by virtue of the order dtd. 14.01.1999 of the DPE, Ministry of Industry the Office memorandum (in brief OM) was issued for the 6th Round Wage Negotiation in Public Sector Enterprises. The DPE imparted instruction in the said OM to have the Wage Revision once in every 10 years w.e.f. 01.01.1997. WW1, D. Venkatachalam on behalf of the First Party (BMS) produced relevant documents. In that respect the Memorandum of Understanding under Ext.W1 and the circular thereon dtd. 15.11.2000 were produced and marked as Ext.W1 and Ext.W2. The copy of aforesaid DPE guideline though filed was not marked as Exhibit. The First Party Petitioner (BMS) found not to have disputed the aforesaid OM. On the other hand, the First Party on expiry of the periodicity of Wage Revision of 10 years (from 01.01.1997 to 31.12.2006) on dtd. 01.01.2007 moved the Management by furnishing their Charter of Demands dtd. 30.12.2006 which was marked as Ext.W3 through WW1. In support of the contentions of Ext.W3 this witness in Para-3 categorically states that the Office Memorandum vide DPE OM No. 2(7)/06-DPE(WC)-GL VI dtd. 01.05.2008 (Ext.W4) was issued for revision of wages for PSU Workers. It is emphatically stated that the said OM reads that "*the government has decided that the validity of Wage Settlement can be for a period less than 10 years but not less than 5 years*". It is contended by the First Petitioner through its Authorized Representative that the Government of India vide the aforesaid OM imparted the guideline to the Competent Authority to consider the periodicity for Wage Revision not beyond 10 years but less than 10 years and above 5 years. On perusal of the documents on records it appears that the Charter of Demands (Ext.W3) was submitted by the First Party basing on the guideline of Ext.W4.

9. After conducting series of meetings of Joint Committee commencing from 21.01.2009, set at rest on 30.12.2009 vide Memorandum of Agreement (Ext.W5). The specific pleadings of the Claim Statement as well as the evidence adduced by WW1 that such an Agreement under Ext.W5 is not binding on the First Party BMS on the ground the Agreement was not in full form nor signed by all the participants except a few. The Appropriate Authority issued three Corporate Human Resource circulars on a single day i.e. 02.06.2010 vide no. (i) 004/IRS/2010 (ii) 006/IRS/2010 and (iii) 005/IRX/2010 marked as Ext.W6, Ext.W7 and Ext.W8 for revision of pay and allowances in respect of the workmen for non-unionized Supervisors including JEs and for Executives respectively. The witness in support of the contentions of the Claim Statement categorically states that the MoA (Ext.W5) is not a valid Agreement in want of specification of periodicity / duration for Wage Revision. The Agreement was not in accordance to the guideline of the DPE (Ext.W4). The omission of the periodicity in the aforesaid circulars is also highlighted.

10. At the outset, the Learned Counsel for the Respondent advanced his argument justifying the action of the Management that there was no specification of the periodicity for Wage Revision in the MoA agreed upon by the BMS. The MW1, Joy Alexander, the Additional General Manager (HR), BHEL/BAP Ranipet categorically states evidence in Para-7 that a Joint Committee Meeting was held on 30.12.2009 at New Delhi for implementation of the Wage Revision w.e.f. 01.01.2007. The extract of Memorandum of Agreement was produced and marked as Ext.M1 (an incomplete document). It is further stated by him that the said Agreement (Ext.M1) not only covers the Petitioner's Union but to all other similar workmen. Such contention

cannot be taken into account as claimed based on the facts contended in Ext.M1 (an incomplete document). The periodicity of Agreement dtd. 30.12.2009 (Ext.W5) says at Para-2.2 that it will be that of Executives and Non-Unionized Supervisors. Basing on the recommendations of the Committee under the Chairmanship of Justice S. Mohan, Retd. Judge, Supreme Court the Government has decided that the scale of pay attached to Board Level Posts and Board Level Posts would stand revised from 01.01.1997 and the next pay revision will lie after 10 years. The said DPE guideline OM No. 2/49/98-DPE WC dtd. 25.06.1999 may be marked as Ext.M2. So far the contentions in Ext.M2 is concerned since no dispute arose needs no discussion.

11. MW1 adds that the Government of India, Ministry of Heavy Industries and Public Enterprise vide OM dtd. 26.11.2008 (Ext.M3) advised the CPSEs to accept the recommendation of Second Pay Revision Committee held under the Chairmanship of Justice M. Jagannatha Rao, Retd. Judge of Supreme Court of India regarding the revision of pay and allowances for below Board Level and Board Level Executive and Non-Unionized Supervisors.

12. It is further stated by this Witness that the Workers Union of Trichy Unit raised an identical dispute before the Conciliation Officer, the ALC (Central) demanding termination of current Wage Settlement vide MoA dtd. 30.12.2009 under Section 19(2) of the ID Act. The Respondent's Company made necessary reply vide its correspondence under Ext.M4 and Ext.M5 that such demand is not tenable as the said Agreement dtd. 30.12.2009 (marked in the instant case as Ext.W4) was executed by the Representatives of the elected Unions and the Management during the course of Joint Committee Meeting. Some more documents relating to the conciliation proceeding have been produced and marked as Ext.M6, Ext.M7 and Ext.M8. MW1 states since the Wage Agreement is still in force, the provision under Section-19(2) of the ID Act cannot be invoked to terminate the same. This witness emphasized that the Petitioner's Union has no right to demand the termination of the Agreement as much as the Section-19(2) can only be applicable in respect of a settlement under Section-12(3) or an Agreement under Section-18(1) of the ID Act, entered between the Employer and the Employee. It is stated that the Agreement dtd. 30.12.2009 (Ext.W4) is an independent Agreement between the Representatives of the elected Union from all the Units and the Management. Hence binding upon all such Units including the Petitioner's Unit at Ranipet.

13. One Sri Samir Mukherjee who was working as Additional General Manager (also holds affairs relating to HR and IR Policy Matters) adduced evidence as MW2 almost corroborating the facts stated by MW1. He produced some more documents on behalf of the Respondent. Some of those are the same copies of those documents already relied by the Petitioner. Ext.M10 is the copy of Memorandum of Agreement (Ext.W5). Ext.M11 is the same copy of Ext.W6. This Witness categorically states that the MoA dtd. 30.12.2009 (Ext.W5) was signed by INTUC, AITUC and HMS and most of the independent Unions of the Joint Committee. It is contended that even though BMS Union participated in the discussion refused to sign on MoA but the benefits are enjoyed by the members of BMS. It is also claimed that the BMS Union participated in the Sub-Committee of the Joint Committee constituted for framing of pay-scales of the workmen. The participant Unions of the Joint Committee and the signatories of the MoA have never raised any dispute. Only the non-participant Unions have submitted the Charter of Demands for Wage Revision. Pending disposal of the case, the Counsel for the Petitioner filed memo with an Affidavit of MW2 alongwith MoU (Ext.M15) regarding the pay revision held by both the parties for the period commencing from 01.01.2017 to 31.12.2026 and prays to adjudicate the reference in terms of it. It is contended that the periodicity for Wage Revision was for 10 years in view Ext.M15. The First Party vehemently raises objection. Taking into consideration the fact of submission and the MoU under Ext.M15.

14. In view of the discussion held in preceding paragraphs with regard to the evidence adduced by the Witnesses of both parties and the argument advanced by the Learned Counsels occasioned this Tribunal to have a careful and meticulous perusal on all relating documents. The admitted undisputed facts remains that by virtue of the OM dtd. 14.01.1999 regarding policy for the Sixth Round Wage Negotiation in Public Enterprise, the Wage Revision was given effect for a period of 10 years w.e.f. 01.01.1997 which expired on 31.12.1996.

Pursuant to the OM dtd. 01.05.2008 under Ext.W4 (DPE Guidelines), the First Party submitted their Charter of Demands especially claiming for the periodicity of Wage Revision. It is clearly mentioned in Ext.W4 "Considering the demands of various Unions / Associations of CPSEs, the Government has decided that the validity of Wage Settlement *can be for a period of less than 10 years but not less than 5 years*". Since the Government of India imparted necessary guideline vide the aforesaid OM, the Respondent Management to consider if they can reduce the periodicity of Wage Revision less than 10 years but not less than 5 years which implies that the Respondent Management had a lot of scope to fix up the periodicity of such Wage Revision in between 5 years to 10 years.

15. At the outset, the most vital document, the Charter of Demands (Ext.W3), the DPE Guideline (Ext.W4), MoA (Ext.W5) and all the circulars dtd. 06.02.2010 under Ext.W6, Ext.W7 and Ext.W8 are taken

into consideration. Admittedly, the Charter of Demands under Ext.W3 dtd. 31.12.2006 claims for a Wage Revision once in 5 years w.e.f. 01.01.2007 to 31.12.2011 and onwards. Ext.W4, the DPE Guideline vide OM dtd. 01.05.2008 was issued by the Government of India. Thereafter, the MoA dtd. 31.12.2009 vide Ext.W5 was exhibited. The Clause 2.1 of the Agreement stands for duration of the Agreement. It reads “Agreement will be effective from 01.01.2007”. It is silent as to what period the Agreement will be in force. The Clause 2.2 reads that “The periodicity of Agreement will be same as that of Executives and Non-Unionized Supervisors”. Attention was drawn on the Circular under Ext.W6 which is for revision of Pay and Allowances in respect of the workmen. It reveals from Clause 2.2 of the Agreement it is dependent on Circular under Ext.W7 and Ext.W8 which stands for revision of Pay and Allowances in respect of Non-Unionized Supervisors and JEs and Circular under Ext.W7 for revision of Pay and Allowances in respect of Executives. Both the Circulars viz. Ext.W7 and Ext.W8 bear almost 33 clauses respectively regarding revision of different perks, emoluments, allowances, wages, salaries, etc. w.e.f. 01.01.2007. But nowhere those circulars whisper regarding the periodicity. At the outset, the attention is also drawn on Ext.W9 which is found to be an Inter-Office Memorandum issued by MW2, Samir Mukherjee, the then Senior Deputy General Manager (HR). It reveals from Ext.W9 that a meeting was held at Bangalore on 29.07.2011. The copy of Record Notes of the meeting was sent to the Representative of Executives of different Union who participated in the meeting. The First Party, Ranipet Union since a participant, was issued with the Notes of Record vide. Ext.W9. Attention was drawn on the Record of Notes consists of FOBEA points in Annexure-2. It seems different issues including the matter of Wage Revision was taken up as against S.No. 5.14. The S.No. 5.14 of Ext.W9 says **“Wage Revision to start from 2012”**. Against the S.No. it is noted “The Management stated no periodicity is mentioned in DPE Guideline”. On going through Ext.W9 and the very specific clause under S.No. 5.14 it seems the Management in a very mechanical manner taken up the issue. It is held that several meetings have been held in between the parties to resolve several issues including the Wage Revision. Pending disposal of the issue to fix up the period of periodicity of 5 years w.e.f. 01.01.2007, the Wage Revision was held on expiry of 10 years i.e. 31.12.2016. While sitting to adjudicate the instant ID, this Tribunal hardly finds any scope to consider the contentions of the Respondent regarding the execution of the Agreement, if any held in between the parties vide MoU dtd. 01.01.2019. The fixation of the periodicity for Wage Revision for a period of 10 years from 01.01.2017 to 31.12.2026 is in no way would be the matter of discussion. Besides, in order to avoid confusion it needs mention that the connected IA 35/2019 was rejected not being the subject matter of reference, hence cannot be taken into account. In the prevailing situation it seems the matter has progressed in this dimension in fixing the periodicity for 10 years.

16. At the outset it would not be out of place to mention that this Tribunal has hardly any jurisdiction to go beyond the reference. The issue was accordingly settled to see if the action of the Management is justified in refusing to discuss about the pay revision as per the Charter of Demands. Admittedly, the DPE (Ext.W4) does not fix up the periodicity for wage revision but imparted instruction to the Appropriate / Competent Authority to fix up the period of periodicity.

17. In view of the discussion held in preceding paragraphs with regard to the evidence of the Witnesses as well as the documents it is held that the Respondent Management cannot take the advantage of the omission if any crept in the DPE Guideline, but to move in the right perspective defining the spirit of the Guideline. The DPE OM is issued by none else other than the Govt of India. The Respondents found to have ignored the importance of the Guideline. The Guideline though not mandatory, but obligatory to follow the instructions imparted therein. It reveals even though the Respondents held several meetings and executed settlements on different occasions and circulars were issued under Ext.W6, Ext.W7 and Ext.W8, found to have seriously failed to discuss the most vital issues of the Charter of Demands i.e. to fix up the periodicity for Wage Revision with the stake holders, the Unions affiliated to BMS. In this context, the Respondents should have taken all care to ascertain if all the Unions (including the Petitioner’s Union) to participate in the discussion individually or through BMS to which they are affiliated.

At the cost of repetition, it needs mention that the DPE Guideline is very much clear that **“the demands of various Unions and Associations were taken into consideration and the Government has decided that the validity of the Wage Settlement can be for a period less than 10 years but not less than 5 years”**. It reveals that the Government of India imparted necessary instructions to the Appropriate and Competent Authority to fix up the periodicity in this regard vide DPE Guideline (Ext.W4). As such, before proceeding with any Wage Revision the Management Company has got ample scope to discuss the matter in issue with all the Unions through BMS to which they are affiliated with regard to prevailing circumstance, every pros and cons of the socio-economic status of the employees and the price hike of the essential commodities. If any consensus arose out of such reasonable discussion, the Respondent Management could have fixed up the periodicity of Wage Revision not in strict sense at 10 years but less than 10 years but not less than 5 years i.e. within 5 to 10 years in consonance to Ext.W4. The Guideline implies a discretionary jurisdiction lies with the Respondents in this regard. But the Respondents thoroughly failed to exercise its discretionary jurisdiction by not allowing the

Petitioner Union to discuss on the very issue of fixation of periodicity once in 5 years w.e.f. 01.01.2012 i.e. after expiry of the previous Wage Revision (i.e. from 01.01.1997 to 31.12.2006).

18. In the result, the action of the Respondents by not allowing the discussion on fixation of the periodicity of Wage Revision (as per the Charter of Demand dtd. 31.12.2006) with the Petitioner Union, is found not justified and proper. Accordingly the Petitioner Union is at liberty to approach the Respondents afresh in this regard.

The Respondents are directed to consider the Charter of Demand dtd. 31.12.2006 regarding the fixation of periodicity of Wage Revision in consonance to the DPE Guideline dtd. 01.05.2008, within a period of 6 months from the date of Gazette Notification of the Award, if approached by the Petitioner Union through BMS.

The reference is answered in favour of the Petitioner Union.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th July, 2020)

Witnesses Examined

For the 1 st Party/Petitioner	:	WW1, Sri D. Venkatachalam
For the 2 nd Party/Management	:	MW1, Sri Joy Alexander
		MW2, Sri Samir Mukherjee

Documents Marked:

On the petitioners side

Ex.No.	Date	Description
Ex.W1	12.09.2000	Copy of the Memorandum of Understanding
Ex.W2	02.07.2012	Wage Termination Note.
Ex.W3	30.12.2006	Copy of the Charter of Demands submitted by BAP Mazdoor Sangam
Ex.W4	01.05.2008	Copy of the DPE Guideline
Ex.W5	30.12.2009	Copy of the Memorandum Agreement
Ex.W6	06.02.2010	Copy of the Circular No.AA/HR/IR/523-Revision of Wages for Workers in BHEL
Ex.W7	06.02.2010	Copy of the Circular No.AA/HR/IR/522-Revision of Wages for Supervisor in BHEL
Ex.W8	06.02.2010	Copy of the Circular No.AA/HR/IR/521-Revision of Wages for Executives in BHEL
Ex.W9	29.07.2011	Copy of the Record Notes of Meeting with the Representatives of Executives at Bangalore
Ex.W10	15.11.2010	Corporate Personnel Circular No. 094/IRX/206 Wage Revision for AB1 to AB6.

Documents Marked:-

On the Respondent side

Ex.No.	Date	Description
Ex.M1	01.01.2007	Joint Committee for BHEL Memorandum of Agreement for Wage Settlement
Ex.M2	-	DPE Guidelines (O.M.No .2(49)/98-DPE (WC) dated 25.06.99
Ex.M3	26.11.2008	Office Memorandum No. 2(70)/08-DPE (WC)

Ex.M4	27.09.2013	Letter from BHEL to Asst. Labour Commissioner
Ex.M5	14.12.2013	Letter from BHEL to Asst. Labour Commissioner
Ex.M6	26.03.2014	Claim Statement of Petitioner
Ex.M7	02.07.2014	Proceedings F.No.L-42011/45/2014-IR(DU) of Ministry of Labour & Employment
Ex.M8	15.12.2014	Letter by BHEL to Asst. Labour Commissioner
Ex.M9	21.09.2013	Letter from BAP Mazdoor Sangam (BMS) (Affiliated to Bharatiya Mazdoor Sangh) Reg.No.580/NAT, Ranipet 632 406 to Additional General Manager-HR, BAP BHEL, Ranipet.
Ex.M10	30.12.2009	BHEL-New Delhi-Jt. Committee for BHEL-M.O. Agreement in 13 th meeting of Jt. Committee held on 30.12.2009-after last wage Agreement w.e.f.01.01.1997 expired on 31.12.2006
Ex.M11	06.02.2010	Corporate Human Recourse Circular No.007/IRX/2010-Revision of Pay & Allowances in respect of workmen – M.O. Agreement reached in Joint Committee Meeting on 30.12.2009-Pay & Allowances-A1/B1 to A6/B6, A10/B10 to A12/B12 grades effective from 01.01.2007
Ex.M12	01.01.2010	Constitution of sub-Committee of the Joint Committee-Circular-Ref. No. AA/HR/523 (SC)
Ex.M13	18.01.2010	Minutes of Sub-Committee of the Joint Committee Meeting held on 18.01.2010
Ex.M14	18.01.2010	Minutes of the 14 th Meeting of Joint Committee for BHEL held on 18.01.2010 at New Delhi.

नई दिल्ली, 28 सितम्बर, 2020

का.आ. 903.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हेसेल इंजीनियरिंग प्राइवेट लिमिटेड, पलारीवट्टोम, कोच्चि-, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 09/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.09.20 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th September, 2020

S. O. 903.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2018) of the Central Government Industrial-Tribunal-cum Labour Court Ernakulum, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Hesel Engineering Pvt. Ltd., Palarivattom, Kochi. & Others, and their workmen which were received by the Central Government on 02.09.20.

[No. L-42025/07/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 16th day of December 2019, 25Agrahayana1941)

ID No.9/2018

Workman : Shri. Shinoj A.S.
 Allunkal House
 Kenichira
 Athirattukunnu P.O.
 Wayanad - 673596

By Adv. Jolly John K.

Management : Hesel Engineering Pvt. Ltd.
 35/333B, 2ndFloor
 Vilangadan Estate
 Mamangalam
 Pottakuzhy Road
 Palarivattom
 Kochi - 682025

By Adv. Paulson C. Varghese

This case coming up for final hearing on 25.11.2019 and this Industrial Tribunal-cum-Labour Court on 16.12.2019 passed the following:

AWARD

1. The Workman filed the present industrial dispute U/s 2(A)(2) of Industrial Disputes Act, 1947.
2. The workman was appointed as a technician in the management company from 01.01.2008 onwards. The management company is doing the work of operation and maintenance of Indus mobile towers. The management is insisting the workers to work beyond hours of statutory limit. The attitude of the management is unfair towards labours. When the Memorandum of settlement was signed on 17.10.2014 before the Asst. Labour Commissioner (Central), he added two special clauses in the Memorandum of settlement. Clause 7 regarding one day weekly leave and Clause 10 regarding 9 hours working hour for the technicians. The management is insisting for work beyond 9 hours is violation of terms of settlement. On 02.08.2016 the workman applied for 2 days leave for personal reasons. The leave was sanctioned by the competent authority. On 04.08.2016 the workman was directed to report at Ernakulam office on 05.08.2016. Since the workman was travelling from Kottayam to Kozhikode on 04.08.2016 he met the Senior Manager (HR) on the way and he was issued a show cause notice alleging that the workman had been handling contracts of RCPH and have provided vehicles on rent. The workman denied the above allegations. On 12.08.2016 the workman was directed to return the official sim. He received a communication regarding appointment of an Enquiry Officer but no specific charge sheet was issued to him. The Enquiry Officer conducted the enquiry in a partisan manner. He also amended the show cause notice issued to the workman. The Enquiry Officer submitted the report dt.26.09.2016 finding the charges against the workman proved. Management issued a 2nd show cause notice dt.07.10.2016. The workman gave a reply on 02.11.2016. Without considering the contentions the management proposed a punishment of dismissal from service. The workman submitted a detailed reply. Without considering the reply the workman was dismissed from service. The enquiry was conducted in complete violation of natural justice. The above order of dismissal was challenged by the workman before the District Labour Officer, Wayanad. The management filed an objection disputing the jurisdiction of District Labour Officer vide their letter dt.07.06.2017. On the basis of above letter the District Labour Officer, Wayanad directed the workman to approach the Dy. Chief Labour Commissioner (Central). Hence the workman filed another complaint before the Dy.Chief Labour Commissioner (Central) on 18.07.2017. Since the management was adamant in their approach the conciliation process failed.
3. The management entered appearance in the proceedings and filed a preliminary objection regarding the maintainability of this industrial dispute. Hence the following issue is framed for preliminary decision;
 - a) Whether the industrial dispute is maintainable before this Tribunal?

4. According to the Counsel for the management, the petitioner/management is absolutely a private limited company which has absolutely no control or supervision by the Central Govt. The management is owned, managed, operated and financed by private individual which has no govt. control. The management establishment is a service provider of various infrastructure service providers in the field of network. The management provides uninterrupted power supply to various infrastructure service providers by providing technicians, supervisors etc. Neither the management establishment nor the service utilizer who receives service of this management establishment has any Government supervision, participation or control. Considering the nature of management establishment Central Govt. is not the appropriate government in relation to the industrial dispute.

5. The workman filed his objection stating that he approach the District Labour Officer, Wayanad in the first instance. The management took a plea that the State Government is not the appropriate Govt. and District Labour Officer, Wayanad has no jurisdiction to adjudicate the matter. Accordingly the matter was referred to the Dy. Chief Labour Commissioner (Central) for adjudication. The conciliation process initiated by the Dy. Chief Labour Commissioner (Central) failed because of the adamant stand taken by the management. The Counsel for the workman also pleaded that if the Tribunal finds that it has no jurisdiction to hear the matter the workman may be allowed to file fresh petition before District Labour Officer, Wayanad.

6. As per Sec. 2(a) of Industrial Disputes Act, "Appropriate Govt" means in relation to any industrial dispute concerning an industry carried on by or under the authority of Central Govt. or and as per proviso to Sec. 2(a) "in case of a dispute between a contractor and the contract labour employed through the contractor in any of the industrial establishment where such dispute first arose, the appropriate Govt. shall be the Central Govt. or the State Govt. as the case may be which has control over such industrial establishment". In the present case, there is no pleading that the workman is working in an industry carried on by or under the authority of Central Govt. or with a contractor over whom the Central Govt. has any control. In the absence of any evidence to that effect it is not possible to assume jurisdiction over the industrial dispute.

7. Hence the issue of maintainability is decided against the workman and in favour of the management. Hence a preliminary order is passed holding that this application U/s 2(A)(2) of Industrial Disputes Act, 1947 is not maintainable and the workman may approach the appropriate authority for his relief.

8. Since the preliminary issue of maintainability is decided against the workman, an award is passed holding that the present industrial dispute U/s 2(A)(2) of the Industrial Disputes Act, 1947 is not maintainable and the workman may approach the appropriate authority for his relief.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 16th day of December, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil
Exhibits for the Management	-	Nil

नई दिल्ली, 5 अक्टूबर, 2020

का. आ. 904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ओ एन जी सी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गुवाहाटी के पंचाट (संदर्भ संख्या 10/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20040/77/1995-आईआर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 904.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati (Ref. No. 10 of 2017) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ltd., and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20040/77/1995-IR(CM-1)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B.Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 10 of 2017

In the matter of an Industrial Dispute between :-

Sh. Debkanta Das & Ors	...Claimants/ Workmen
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-Vrs-

Oil and Natural Gas Corporation Ltd. Sivsagar & Ors.	...O.Ps/Management
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APPEARANCES

For the Workmen. : Mr. A.Kundu, Ld. Advocate.

For the Management. : Mr. G.N.Sahewalla, Ld. Sr. Advocate.
Mr. B.K.Das, Ld. Advocate.

Date of Award:13.05.2020

AWARD

1. This Industrial Dispute was originally referred to the learned Industrial Tribunal, Guwahati constituted by the Government of Assam. The reference was made by the Government of India, Ministry of labour vide Notification dated 21.11.1996 with the following Schedule.

SCHEME

“Whether the demand for regularization by management of Oil & Natural Gas Corporation, Nazira and equal wages at par with their direct counterparts by S/Shri Jatin Kr. Nath, Md. Safiratdin Ahmed, Sri Deba Kanta Das, Sk. Nurmahamad Ali, Sripasad Das, Sk. Basiratdin Ahmed, Anil Ch.Das, Dijen Kakaty, Pranab Borah, Parag Phukan, Prafulla Das, Bhadra Kanta Das, Rupam Kr. Das, Bipul Borah, Sunil Dey, Atul Ch.Das, Md. Rafiqul Hussain and Bijit Nath is legal and justified? If so, to what reliefs are these workmen entitled?”

2. On receipt of the notification, a Reference Case was registered and the concerned parties were notified. The workman side appeared and submitted written statement stating that 17 workmen mentioned in the Schedule of the reference are locals of the Sibsagar District where the Regional Office of the management is situated. For the purpose of exploration of oil, the management of ONGC acquired land belonging to the family of the concerned workers in the year 1986 with an assurance to provide job at least to one member of each of the affected families temporarily and thereafter on permanent basis. Name, Address, etc. of each concerned worker was annexed along with claim statement as Annexure-1. It was also stated that the decision to provide jobs was arrived at in an agreement after meeting held between the management of ONGC, workers of All Assam Labour Union of Sibsagar District and representative of Government of Assam on 10.09.1986 at the Circuit House, Sibsagar. It was clearly mentioned in the claim statement that in the meeting it was decided that 53 persons of Changmai Gaon and 49 persons of Baliaghata whose land were acquired by the ONGC, can be appointed temporarily for a period of 90 days subject to the renewal/extension of employment from time to time. In this respect several meetings were held but no fruitful and permanent employment was given by the management of

ONGC. Ultimately the management of ONGC assured that the land affected people of Changmai Gaon and Baliaghata may be given temporary/contractual appointment first. It was mentioned in the claim statement that according to the Standing Order of the ONGC there were 3 classes of employees namely regular, temporary and casual and there is no provision for any contractual employee in ONGC. However the management engaged them for performing the duties of Security Guards but even after the engagement for 10 years their jobs were not regularized. On being aggrieved by the conduct of the management the concerned workers and their Union raised an Industrial Dispute before the concerned Regional Labour Commissioner (C), Guwahati and after holding of conciliation proceeding the conciliation Officer sent a "failure report" to the concerned Ministry wherefrom the reference sent. According to the concerned workmen the nature of the job which they were performing i.e. the job of Security Guards are perennial in nature and hence the management must regularize their engagement.

3. By filing written statement the management opposed the claim raised by the concerned workmen and specifically stated that the nature of the dispute did not qualify to be an Industrial Dispute and hence the reference itself was not maintainable. It was also stated that the concerned workmen were engaged by the ONGC through Contractor and there existed no employer employee relationship between the management and the concerned workers and the matter was covered u/s 10 of the Contract Labour (Abolition and Regulation) Act, 1970. The management submitted copies of the several agreements of the management with the contractors for engagement of Security Guards.

4. The Tribunal to which the matter was referred passed an Award on 30.11.2000 directing the management of the ONGC to regularize the service of the workmen within a year from the date of the Award and it was further directed that if all of them could not be regularized within the aforesaid time they should be paid equal remuneration with that of the regular employee working in the equal status till regularization. The management of ONGC challenged the correctness of the Award by filing Writ Petition No. 8368/2001. Vide judgment dated 21.05.2004 Hon'ble Gauhati High Court disposed of the Writ Petition by setting aside the Award dated 30.11.2000 and remitted back the matter to the Industrial Tribunal for a fresh decision confining the matter only to 11 persons excluding the 6 who have already been found to be contractors engaged by the ONGC. After receipt of the remittal order the Tribunal again proceeded with the matter and disposed of the same vide Award dated 15.05.2009 holding that the concerned 11 numbers of workmen namely 1) Deba Kanta Das, 2) Sripasad Das 3) Basiratuddin Ahmed, 4) Anil Ch. Das, 5) Dijen Kakati, 6) Pranab Borah, 7) Prafulla Das, 8) Bhadra Kanta Das, 9) Rupam Kr. Das, 10) Bipul Baruah and 11) Bijit Das are not entitled to be regularized or permanently absorbed by the ONGC. After the passing of the aforesaid Award dated 15.05.2009 the concerned workers challenged the same before the Hon'ble Gauhati High Court in W.P (C) No.3654/2010. Vide order dated 27.11.2014 Hon'ble Gauhati High Court remitted the matter to the Tribunal with a direction to give a fresh finding considering all the evidence that was available on record. Against the aforesaid judgment of the Hon'ble Single Bench, ONGC preferred Writ Appeal No.202/2016. Vide order dated 13.06.2016, the Hon'ble High Court dismissed the Appeal and made an observation that the Tribunal will be at liberty to decide the matter on its merit.

5. After the aforesaid order when the matter was received back by the Tribunal the parties appeared on being notified and the workman side examined one more witness namely Bijit Nath as workman witness No.5. It may be mentioned here that earlier the workman side examined 4 numbers of witnesses. The management side also examined one witness namely Sri R.K. Agrahari as management witness No.4. Both the witnesses were cross examined by the respective rival parties. Thereafter the matter was argued by the parties. Learned Sr. Counsel Mr. G.N. Sahewalla argued on behalf of the ONGC. He was assisted by learned advocate B. Das. Argument on behalf of the workman side was put forward by learned advocate A. Kundu.

6. During argument workman side submitted that there was no dispute that land was acquired by the ONGC and there was an agreement between the ONGC and the family of the land holders whose land was acquired and it was agreed upon that at least one member from each family whose land was acquired by the ONGC will be given an employment by the management of ONGC. It was further argued that thereafter ONGC engaged some persons but made no arrangement for regularization. Workman side referred the minutes of meeting dated 16.7.1986 (Exhibit-15) and stated that in that meeting the ONGC committed to appoint land affected persons. Minutes of another meeting dated 01.08.1986 was also exhibited as Exhibit-16 where after the concerned workers were engaged as Security Guards to various drilling sites, gas gathering sites , the rig wells etc. It was further stated that the concerned workers worked for a period of 10 years but even then the ONGC did not make any arrangement to regularize them. It was further argued on behalf of the workman side that the management is bound to honour the agreements arrived at during the meetings (Exhibit-15 and Exhibit-16).

7. Learned Sr. Counsel Mr Sahewalla, appearing for the management of ONGC, on the other hand, submitted that the concerned workers have never been under direct employment of ONGC in any capacity. He further submitted that certain works like Security Guard etc. were outsourced to various contractors and those contractors engaged the concerned works as Security Guards and also paid their wages etc. He however submitted that the wages etc. paid by the contractors to the workers were subsequently reimbursed to the contractor by the management of ONGC. In that connection he referred to certain exhibits proved by the management namely Exhibit-A, B, C, D, E, F, G, G(ii), H(ii), I(ii) etc. He also submitted that the lands which were acquired by the ONGC from the respective land owners were completely and duly compensated by the management of ONGC. He also submitted that an understanding with the ONGC with the families of the land owner was that one member each from each family would be provided an employment. He also stated that it was never agreed that such engagement will be regular engagement because for giving regular engagement in a Public Enterprises certain Rules and Regulations are to be followed and such employment can only be made through open and public advertisement allowing all eligible persons to compete for such employment. The witness of the workman side proved certain documents showing that there were meetings between the Union and the management in presence of the District Administration for providing employment to the families of the land owners. The workman witnesses did not deny that the concerned workers were employed through the contractors and their wages etc. were paid by the contractors. All the workman witnesses stated the above facts and further stated that it was understood by the concerned workers that they would be subsequently given regular employment by the ONGC in due course. It was also stated by the witnesses of the workman side that though initially the Authorities of ONGC was reluctant to employ one member of each land affected family but ultimately at the initiative of the concerned Deputy Commissioner of the district meetings were held and ultimately the ONGC committed to appoint land affected persons.

8. The main objection raised by the management side was that there was no employer-employee relationship among the management and the concerned workers and hence, this reference itself is not maintainable. It is an admitted fact that for deciding existence or otherwise of employer-employee relationship between the management and the workers, the following points are to be decided.

- (i) Who appoint the workers ?
- (ii) Who pays the wages ?
- (iii) Who is the authority to take disciplinary action ?
- (iv) Who supervises the work of the workers ?
- (v) Whether there is continuity of service ?

9. From the evidence of the witnesses of the parties it was clear that the concerned workers were engaged by the contractor. The work was outsourced by the management to the contractors and such agreements between the management and respective contractors have been proved in this case. It was also not in dispute that wages were paid to the concerned workers by the respective contractors. Cross-examination of workman witnesses No.5 categorically revealed that the contractor used to pay their wages and that the pass issued by the ONGC to facilitate entry of the concerned workers to the ONGC premises was non-employee pass. It was also admitted position that they never appeared in any selection process conducted by the ONGC for recruitment of staff and there was clear admission by the workman Witness No.5 that during the period of employment one contractor used to pay their wages as contract workers. Hence, it was clear that wages were paid by the contractor and there was absolutely nothing on the record to suggest that the contract workers received their wages from the principal employer. In regard to the control over the concerned workers it would be natural that the Institution where the workers would be engaged by the contractor would have some basic control over them because ultimately it was the Institution's works which were being executed through the Contractor. There was absolutely nothing on record to show that the management of ONGC had any absolute control over the workers. It was the contractor who used to pay their wages and it was he (contractor) who had the ultimate control over the engaged workers.

10. In regard to the alleged condition that ONGC would engage one person from each land affected family, the "agreement" was stated to have been arrived at between the Union and the ONGC and the Local Administration. Such Agreement, even if it is found to be valid, cannot over ride the established Rules and Regulation of regular employment in a Public Enterprise. That apart, this Tribunal does not appear to be the competent forum to decide validity or enforceability of any "contract". During cross examination, management witness No.4 the witness was suggested that he has failed to show that the concerned workers were contract labourers. It was the duty of the workman side to show that they were under direct temporary or casual employment of ONGC and being so for long time some right for regular employment accrued to them. However workman side could not prove such thing. On the contrary it was fully proved that the wages etc. were paid to

the workers by the respective contractors. On consideration of the evidence on record in its entirety it clearly transpired that there was no employer-employee relationship between the ONGC and the concerned workers. This reference, therefore, appears to be not maintainable under the Industrial Dispute Act, 1947. If the workers claimed regular employment on the basis of any “contract” or “agreement”, this Tribunal does not appear to be the appropriate forum to decide the validity or enforceability of such contract or agreement. Since the concerned workers failed to prove that there was employer-employee relationship between ONGC and the concerned workers within the meaning of Industrial Dispute Act, 1947, they (workers) do not appear to be eligible for any relief. The reference, therefore, stands disposed of with a no relief award.

Given under the hand and seal of this Tribunal, this 13th day of May, 2020.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 905.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 12/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20012/110/2008-आईआर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 905.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 12 of 2009) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20012/110/2008-IR(CM-1)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act. 1947

Reference: No. 12/2009

Employer in relation to the management of Kusunda Area of M/S. B.C.C.L.

AND

Their workmen

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand.

Industry:- Coal

Dated : 30.06.2020

AWARD

By Order No. L-20012/110/2008 (IR(CM-I)) dated 27/02/2009 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Kusunda Colliery of Kusunda Area of M/s. BCCL in denying regularization as Boiler Foremen to S/Shri Dayaram Jaiswara, Amrika Rajbhar and late Fantoosh Rabidas, M/Loaders is justified and legal? To what reliefs are the workmen concerned entitled and from what date?”

2. After receipt of the reference, both parties were noticed but the workman/union didn't appear before the Tribunal. However the management has appeared in this case, but subsequently left appearing before the Tribunal. Thereafter again regd. notice was issued to workman/union as well as to the management but the notice issued to workmen/union returned with endorsement of “Addressee left”. Now the Case is pending since 12/03/2009 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 2020

का. आ. 906.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 25/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20012/310/1997-आईआर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 906.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, Dhanbad (Ref. No. 25 of 1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20012/310/1997-IR(CM-1)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT: Dr.S.K.Thakur, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act , 1947

REFERENCE NO 25 OF 1999

PARTIES : The Secretary,
B.C.K.U.,
Jharnapara, Hirapur, Dhanbad 826001

Vs.

The General Manager,
Bhalgora Area of M/s BCCL,
PO: Bhalgora, Distt: Dhanbad.826001
Order No. L-20012/310/97-IR(C-I) Dated Nil

APPEARANCES :

On behalf of the workman/Union : Mr.B.N.Singh, Ld. Union Representative

On behalf of the Management : Mr. N.M. Kumar, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 26th March, 2020

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-20012/310/97-IR(C-I) Dated Nil.**

SCHEDULE

“Whether the action of the Management of Burragarh Colliery of BCCL in not confirming Sh. Surendra Paswan to the post of Store Clerk and not paying him the wages of the said post are justified? If not so, to what relief he is entitled to?”

On receipt of the Order No. **L-20012/310/97-IR(C-I) Dated Nil** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 25 of 1999 on 21.01.1999 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. Consequent upon registration and subsequently notices, the Sponsoring Union filed the Written Statement of Claim on 18.05.2001. The whole fact was as briefed hereunder with serving a copy to the Opposite Party /Management:

- A) That the workman named Surendra Paswan has been working as Store Clerk since 1992 continuously with unblemished record of service.
- B) that the concerned workman has put in more than 240 days attendance in each calendar year as Store clerk to the satisfaction of the management.
- C) that the concerned workman was transferred to Bhalgora Area 19.10.1994 and since then the concerned workman has been working as Store clerk as per direction and authorization of the Management and as such he has put in more than 240 days attendance as Store clerk in each calendar year.
- D) That the Management has implemented Wage Board Recommendation which has got statutory force as per decision of the Hon' ble Patna High Court and the management has also implemented NCWA which is a settlement as per decision of the Patna High Court.
- E) That the concerned workman accordingly represented before the Management for his regularization as Store Clerk and payment of wages of a clerk without any effect.
- F) That ,though the concerned workman has been working as store clerk against permanent vacancy as per direction and authorization of the Management till then the management neither regularized the concerned workman as Store Clerk/Clerk nor paying the concerned workman clerical wages as per NCWA.
- G) That the concerned workman represented before the management several time for his regularization in Clerical Grade and for wages of a Clerk till then the Management has been paying the concerned workman only Group a wages in utter violation of the provision of NCWA and principle of natural justice.
- H) That the management discriminated the concerned workman in the matter of regularization and in the matter of payment of monthly wages and other attendance benefits as per NCWA
- I) That the Management also denied equal wage for performing equal nature of job.
- J) That, seeing no other alternative the Union on behalf of the concerned workman raised an Industrial dispute demanding regularization of the concerned workman s Store Clerk/Clerk. During the course of conciliation proceeding the Management's plea was that the concerned workman was allegedly engaged as Store clerk as and when required. The Union vehemently protested against the false and motivated statement of the management. However, due to the adamant attitude of the Management the conciliation proceeding ended in failure and the appropriate government referred the dispute for adjudication.
- K) That the action of the management in not confirming Surendra Paswan to the post of Store Clerk and not paying him wages of the said post was neither legal nor justified.

- L) That the action of the management was illegal, arbitrary, unjustified and against the principle of natural justice.
- M) That the action of the management is vindictive in nature and smacks of anti-labour policy of the management.
- N) That the action of the Management is discriminatition in nature and against the provision of NCWA.
- O) That the workman seeks from Management to confirm him as Store Clerk and to pay him wages of a Store clerk with retrospective effect with all arrear of wages.

3. On the other hand, as against the Written Statement of Claim so filed by the Sponsoring Union, the Management/Opposite Party countered filed Claim on 12.08.2002 with serving a copy of the same to the petitioner ,defended the claim somewhat as follow:

- A) That the present reference is not maintainable both in law and facts of the case.
- B) That Sri Surendra Paswan is a permanent employee of Kustore Area of M/s Bharat Coking Coal Ltd., and his designations M/Loader, but he was allowed to work time to time as a general Mazdoor.
- C) that the concerned workman never continuously worked as a clerk nor worked as a Store clerk though he was given job time to time to handle materials under the guidance of Store –keeper from one Store to another.
- D) That vide letter No dated 10.06.1992 he was offered to take training of clerk under certain conditions. It was clearly indicated in the offer letter if he was willing to accept the above terms and conditions, he should report for duty to the Dy.C.M.E. /Agent for his new assignment and it was to be affective from the date he was to report for new assignment.
- E) That the concerned workman did not report to the concerned authorities for new assignment as per the office letter and continued to work as a Miner /Loader at Hurriladiah Colliery under Bhalgora area. Subsequently he was diverted to workman as a General Mazdoor.
- F) That in the year 1995,he was transferred to Bhalgora Project and then to Borragarh Colliery, where he was employed as a General Mazdoor in Category-I
- G) That as per norms of the Company those Miners Loaders who have been working in Time Rated category since more than 3 years and completed 190 days for Underground and 240 days on surface in a year are entitled for regularization in the designation/job being performed by them.
- H) That those employees who accepted the terms and conditions offered by the Management to workman as clerk (T) are regularized after fulfilling the criteria and found suitably for the job. Since the concerned workman did not accept the terms and conditions offered to him vide letter dt.10.06.1992, the question of regularization as clerk does not arise at all. It is further submitted that there has been no discrimination or violation of Natural Justice in this case.
- I) That the concerned workman is not entitled to any relief whatsoever.
- J) That the Bihar Colliery Kamgar Union vide letter dt.21.06.96 raised an Industrial Dispute before the A.L.C. (C) Dhanbad about the concerned workman. The Project Officer/Agent Burragarh Colliery vide letter dated 11.09.1996 explained the facts of the case and prayed for dropping the proceedings. In that letter it was specifically stated that the concerned workman is being paid more than whatever is required to be paid for working to handle the materials from one place to another and that there is no case for regularization of the concerned workman as Store clerk
- K) That anything contained in the Written Statement of the workman, if not accepted by the management in the above paras, may be deemed to be denied by the management.
- L) That the Employer reserves its right to amend the Written-Statement after receiving the rejoinder of the workman and to file documents and to examine its witnesses to prove its case.
- M) So the Management of Burragarh Colliery of M/s BCCL stands by its action in not confirming Sh. Surendra Paswan, the concerned workman to the post of Store Clerk and not paying him the wages of the said Post are justified and the concerned workman is not entitled to any relief.

4. Both sides filed rejoinder rejecting the contention of each other

5 In course of hearing of the Industrial Dispute Case both Sponsoring Union filed written statement of claim which was countered by the Opposite Party/Management by filing also counter claim and went on one step ahead by filing rejoinder on behalf of Employer. The case under trial deposition of the evidence of the workman WW-I is examined and cross examined. In the process the documents which were cropped up were displayed and marked as Ext. W-1 to W-2/7. Then the onus passed on to the evidence of the management /O.P. Upon failure of the consecutive fourth date and the management failure to adduce evidence on its part without assigning any cogent reason thereof the evidence chapter was closed on the part of the Management by the Court vide its order dt. 30.09.2005 and finally shifted for argument of the parties. Since then (10.01.2006), the case status abruptly stayed hovering over stage of argument. To sum up there were no less than altogether eighteen sittings took place over the same status on different dates likewise, 10.01.2006, 13.04.2006, 29.06.2006, 26.09.2006, 31.12.2014, 12.02.2015, 21.04.2015, 08.06.2015, 03.08.2015, 21.09.2015, 24.11.2015, 21.03.2016, 24.05.2016, 13.07.2016, 10.11.2016, 24.08.2017, 06.06.2019 and lastly on 03.12.2019 but no major breakthrough. To say the least approach of the Management is not only perverse but in fact clear violation of the provisions under the Act. The one key fact that was cropped up during recourse of proceeding that the workman concerned had already got his due share of promotion and this being factual position, the subject matter was to be rendered infructuous as it could not be completed for adjudication for so long years.

6 As regards Notices dt.18.05.2001, 17.04.2002, 4.07.2002, and fresh summon on 14.05.2019 and 18.11.2019 were issued. Apart from it, one chance was offered to explore the probability of settling it down through Lok Adalat for which Notice dt 08.12.2014 was also sent. But matter could not be materialized as the Management does not try to budge from their stand. The Sponsoring Union could not respond to the fresh Notices dt.14.05.2019 and 18.11.2019 nor give any cogent reasons thereof .In a way it reflects the workman deliberately skipped to respond the Notice or ceases taking interest in the case.

7 Finally the Industrial Dispute case was taken up for hearing on 03.12.2019 for final hearing or passing order in default. None appeared from either side. Regrettably even after attaining the stage of final argument ,the last leg of final adjudication ,the Sponsoring Union did not make little efforts to get it completed the very old case as years back in 1999 but exposed latches which disentitles the workman from claiming relief sought who himself raised the Industrial Dispute. In the absence of appropriate pleading on a particular issue there can be no adjudication of such issue as the Tribunal couldn't considered and recorded a finding thereon.

8 It is relevant to say that in the absence of any appropriate pleading on a particular issue there can be no adjudication of the Reference nor could the Tribunal have considered the contention and recorded a finding of argument. In coming to the above findings, the Tribunal did not find out rationality to put on hold the case for period indefinitely in the successive absences marked on the part of Sponsoring Union/petitioner. Even if sincere efforts and ample opportunities at the last moment the Sponsoring Union rather kept the proceedings afloat on several pretexts on merits. Thus the case does not have ground inputs on merit due to sheer disinterestedness of the Sponsoring Union to defend the charge. Moreover, the workman had not acted diligently to justify the delay as bonafide .So it could not be endeavored to decide the matter on merit

9 In that view of the matter and close perusal of the different materials available on record, it has been made clear that the Petitioner has not taken any positive step. More so full statutory remedy as provided he had availed .There is no exceptional case made out by the workman (petitioner) to enable the Court to entertain the case as raised.

In the absence of any such exceptional ground being made out rather more inclined to rolling on suo motu indefinitely though the case was almost edge of maturity and hanging on arguments since years together .Sufficient adjournments were granted over the issue to let the case cover up adjudication on merit giving successive notices. Such being the position the Tribunal find no scope to proceed with hearing of the Industrial Dispute Case for an indefinite period of time. The issue on which the case had been raised by the Petitioner himself turned evasive to face hearing. It is inductive, in real terms there is nothing to do away with or diluted the issue by now. Upon holding this view firmly the dispute is disposed of as the workman as of now does not have grievance to be redressed from the Management and relief whatsoever the workman no longer need. The Award is passed accordingly on the same footing.

नई दिल्ली, 5 अक्टूबर, 2020

का. आ. 907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 82/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20012/237/2004-आईआर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 907.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 82 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20012/237/2004-IR(CM-1)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 82/2005

Employer in relation to the management of Govindpur Area No. III of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand.

Industry:- Coal
Dated : 31.07.2020

AWARD

By Order No.L-20012/237/2004- IR (C-1) dated 13/09/2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDE

“क्या भारत कोर्किंग कोल लिमिटेड गोविंदपुर क्षेत्र – III के प्रबंधतंत्र द्वारा श्रीमति दुलाली कामिन कर्मकार को नियमानुसार आवास किराया भता न दिया जाना उचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस राहत की पात्र हैं तथा किस तारीख से?”

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the union/workman left appearing before the Tribunal. Thereafter again regd. notice was issued to both the parties but even then no one appeared on behalf of the workman/union and this case was reserved for ‘No Dispute’ Award on 17/07/2017 but award was not passed due to retirement of P.O. Thereafter again registered notice was issued to workman/union but again no one appeared on behalf of the workman/union. Now the Case is pending since 26/09/2005 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 908—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2ए के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इंडिया लिमिटेड और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 105/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20013/02/2020-आईआर (सीएम-1)]
राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 908.—In pursuance of Section 2A of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, New Delhi (Ref. No. 105 of 2018) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Ltd., and others and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20013/02/2020-IR(CM-1)]
RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer,
CGIT-cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 105/2018

Date of Passing Award : 14th January, 2020

Shri Sandeep Kumar S/o. Ramphal,
Village and Post Office Shahbad Mohammadpur,
New Delhi 110061,
Through Industrial Workers' Union,
F-328, Gali No.22, Sadh Nagar-II, Palam Colony,
New Delhi 110045.

... Workman/Claimant

Versus

1. Delhi International Airport Fuel Fame Facility,
Delhi I.G.I Airport Terminal -3,
New Delhi 110037.

2. M/s. Indianoil Skytanking Pvt. Ltd.
Fuel Fame Facility,
Delhi I.G.I Airport
Shahbad Mohammadpur,
New Delhi 110061.

... Managements

Appearances :-

Shri Piyush Kumar, A/R : For the Workman

Ms. Chetna Rai, A/R : For the Management No.1

None : For the Management No.2

AWARD

This claim petition under Section 2-A of the Industrial Disputes Act, 1947 (in short “the Act”) has been filed directly by the workman Rakesh Yadav with the averments inter-alia that he was employed with the

Management on the post of Operation Officer since 1/7/2013. His last drawn wages were Rs.18,900/- per month. He worked with honesty and dedication. He did not give any chance of complaint to his superiors during his service and his work & conduct was unblemished. The Managements did not provide him legal facilities like payment of overtime, bonus of Rs.18,900/- , pay slip, attendance card/leave book etc. When he started demanding the same, the Management started taking his signatures on blank papers/vouchers in the name of giving legal facilities and ultimately terminated his services in illegal manner on 11/8/2017 without giving any notice, charge-sheet, termination letter or service compensation and this amounted to violation of provisions of Section 25F of the Act. The workman sent a demand letter dated 20/2/2018 through speed post, to the Management, requesting for reinstatement of his services and payment of earned wages but to no response. It is a matter of record that the workman thereafter approached the Assistant Labour Commissioner/Conciliation Officer, raising his grievances. However, no settlement could be reached during conciliation proceedings and a certificate to that effect was issued by the Conciliation Officer as provided under Section 2-A of the Act. The workman claims that he is unemployed since the date of his termination from service and despite efforts he could not get employment. Showing his willingness to work under the Management on the same post, the workman/claimant has prayed for reinstatement into service with back wages and continuity of service.

2. Management No.1 filed its written statement, thereby resisting the claim of the workman and took preliminary objections on the grounds inter alia that the workman/ claimant was never its employees and even the workman himself has not filed any document to show that he was an employee of Management No.1 and as such, the present claim is not maintainable. Prayer has been made for dismissal of claim petition.

3. Management No.2 filed its written statement refuting the claim of the workman/claimant regarding not providing him with legal facilities and about illegal termination of his services. It has been stated that the claimant was employed as Operation Officer through selection process vide appointment letter dated 8/6/2013 and he joined the Management company on 1/7/2013. In the appointment letter which was duly accepted by the workman, it was clearly stated that his services are transferrable and can be seconded or deputed by the company to any other location within India or abroad. Vide letter dated 12/8/2017 the claimant was transferred to the Management's operations at Chennai Airport and he was relieved from his assigned duty at Delhi with effect from close of business hours on 13/8/2017. He requested for withholding his transfer vide e-mail dated 15/8/2017 which was not accepted by the Management and same was duly communicated to the claimant vide e-mail dated 17/8/2017. On 25/8/2017 the claimant informed that he does not accept the transfer as he felt that it would not benefit him personally or professionally. On 28/8/2018 the claimant was informed that non compliance to the transfer order would necessitate appropriate action by the Management as per terms & conditions of the appointment letter but the claimant himself did not report for duty at Chennai Airport and thus, he himself abandoned his employment voluntarily. His full and final settlement amounting to Rs.39370/- was remitted to his SB A/C No.3313263819 with SBI, Sector 10, Dwarka, New Delhi on 13/3/2018, which amount he accepted without a demur and thus, claim of the workman/claimant is without merit. Management No.2 has prayed for dismissal of claim petition.

5- The workman/claimant did not file any rejoinder despite adjournments sought for the purpose. On the pleadings of the parties, following issues were framed in this case on 6/8/2019 :-

- 1) Whether the proceeding is maintainable ?
- 2) Whether there exist any employer and employee relationship between the Management No.1 and the workman ?
- 3) Whether the service of the workman was illegally terminated by Management No.2 i.e. M/s India Oil Skytanking Pvt. Ltd.?
- 4) Whether the claimant had voluntarily left the job and received the amount due from the employer Management No.2 towards full and final settlement of his dues ?
- 5) To what relief the claimant is entitled to ?

7- Perusal of the record shows that despite number of opportunities granted to the workman/claimant to adduce evidence in support his case regarding illegal termination of his services, he did not lead any evidence. It is a matter of record that on 7/1/2020 A/R for the claimant moved a letter stating that the workman /claimant was not in touch with him and requested for closure of the case/dispute. It seemed that the workman/claimant was not interested to prosecute the case. Accordingly, this Tribunal vide order dated 7/1/2020 was constrained to reserve the matter for passing Award.

8- At the outset it is mentioned that onus was upon the claimant/workman to prove his allegations regarding illegal termination of his services by the Management and also to counter the defence of the Management No.2 that it was the workman who himself had abandoned the job voluntarily and had got full &

final settlement of his dues and further that he was not gainfully employed since after discharge/termination from service.

The workman/claimant has failed to discharge the onus. In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass "No Dispute Award" in the matter. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2ए के अनुसरण में, केन्द्रीय सरकार मैसर्स जी एम आर और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 180 / 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20013/02/2020-आईआर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 909.—In pursuance of Section 2A of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, New Delhi (Ref. No. 180 of 2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. G.M.R and others and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20013/02/2020-IR(CM-1)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II,

New Delhi.

INDUSTRIAL DISPUTE CASE NO. 180/2015

Date of Passing Award : 13th January, 2020

SHRI Rakesh Yadav,
S/o. Shri Abhroik Yadav,
R/o. H.No. L-1, Gali No.10/2096-A, Sangam Vihar,
New Delhi through

Akhil Bhartiya Karamchari Trade Union,
E-169, Indira Kalyan Vihar, Opp. C-173 Okhla Phase-1,
New Delhi 110020.

... Workman/Claimant

Versus

1. M/s. G.M.R,
Delhi International Airport Pvt. Ltd. (P.E),
Udhan Bhawan, O.P.T. Terminal Indira Gandhi
International Airport, New Delhi 110037.

2. M/s. GE T&D India Pvt. Ltd.
 (earlier known as M/s Alastom T&D India Pvt. Ltd.),
 T-5 & T-6, Plot I-14, Aix House Jaypee Wishtown,
 Sector 128, NOIDA, Uttar Pradesh 201304. (contractor)

3. M/s. Trishul Corporate Services Pvt. Ltd.
 H.No.12, 18th Avenue, Ashok Nagar,
 Chennai (Tamilnadu) 600083.Managements

Appearances :-

None : For the Workman

Ms. Chetna Rai, A/R : For the Management No. 1

Ms. Rishika Aggarwal, A/R : For the Management No. 2

AWARD

A claim petition under Section 2-A of the Industrial Disputes Act, 1947 (in short “the Act”) has been filed directly by the workman Rakesh Yadav with the averments inter-alia that he had been working with dedication and honesty, under the Managements on the post of Electrician since 24/5/2010. He gave no chance of any complaint during his service and his last drawn wages was Rs. 10477/- per month. The Managements did not provide him legal facilities like payment of overtime, pay slip, identity card etc. and when he started demanding the same, the Management started harassing her and ultimately terminated his services in illegal manner on 24/3/2014 without giving any show cause notice, charge-sheet, termination letter or service compensation. The workman sent a demand letter dated 8/4/2015 through speed post/courier, requesting for reinstatement of his services but to no avail. Thereafter he through the Union approached the Assistant Labour Commissioner/Conciliation Officer but the Management did not appear before the Conciliation Officer, as a result of which a certificate of failure report was issued by the ALC. The workman is unemployed since the date of his termination from service and he could not get service despite best efforts. He has prayed for reinstatement into service with back wages and continuity of service besides litigation expenses of Rs.25,000/-.

2. Management No.1 resisted the claim of the workman, by filing written statement and took preliminary objections on the grounds inter alia that the workman/claimant never worked with or employed by Management No.1, rather he was admittedly employed by Management No. 2 and 3. Denying the allegations of the workman/claimant regarding making oral demands for providing legal facilities to him or that he worked under the control & supervision of Management No.1, prayer has been made for dismissal of claim petition.

3. Management No. 2 while refuting the claim of the workman /claimant took preliminary objections in its written statement inter alia that relationship of employer and employee never existed between Management No.2 and the workman, because Management No. 2 had engaged Management No.3 as a sub-contractor and as per information, the workman/claimant was engaged by Management no. 3. The claimant has concealed material facts with regard to filing of LCA case No.16 of 2014, papers of which file may be perused. The claimant can not claim his alleged employment with and his alleged termination by three establishments simultaneously for the same period and same cause. Management No. 3 has informed Management No2 that the claimant remained unauthorisedly absent from duties on or after 25/3/2014 and inspite of call letter/s sent to the workman, he failed to report for duty with Management No. 3. Thus prayer has been made for dismissal of claim petition with costs.

4- Management No. 3 in its written statement while admitting the factum of employment of the claimant w.e.f.24/5/2010 submitted that the claimant during the tenure of his employment demonstrated misconduct and indiscipline on many occasions but instead of taking punitive action, the workman was let off after many verbal warning and counseling. It is alleged that as per police case registered at PS IGI Airport and statement of witnesses inclusive of claimant recorded by I.O./SI Ms. Meena, the claimant was involved in an act of theft . Instead of terminating his service, the workman/claimant was called by the Management for discussion at its office, vide letter dated 19/4/2016 (sic.19/4/2014) enclosing therewith a train ticket, which letter was deliberately not received by the workman. Again the said letter was sent to the claimant on 22/4/2016 (sic 22/4/2014) through First Flight Courier, which was received by the workman through his wife Ms. Rinku. Again on 6/5/2014, HR Manager of Management No. 3 was in Delhi and called the workman to meet & discuss the matter but the workman/claimant refused to do so which clearly demonstrate the malafide intention of the

workman. It is alleged that the claimant has to pay a sum of Rs.9000/- as balance standing against advance taken by him. Denying the allegations of the claimant regarding not giving him legal facilities, it is averred that the Management company is duly registered under the provisions of ESI Act and EPF Act and is following labour enactments and earned salary of the workman was subject to statutory deductions towards ESI and PF. Prayer has been made for dismissal of claim petition.

5- The workman/claimant filed rejoinders, thereby reiterating his own case as set up in the claim petition and denied the respective allegations of the Management/s.

6- On the pleadings of the parties, following issues were framed in this case on 15/1/2019 :-

- 1) Whether the proceeding is not maintainable against Management No.1 and 2 ?
- 2) Whether there existed relationship of employer and employee between the Management No.1 & 2 and the workman herein ?
- 3) Whether service of the workman was illegally and unjustifiably terminated by the Management ?
- 4) To what relief the workman is entitled to and against whom ?

7- Perusal of the record shows that despite number of opportunities granted to the workman/claimant to adduce evidence in support his case regarding illegal termination of his services, he did not lead any evidence. It is a matter of record that the claimant had opted not to participate in the proceedings since 21/5/2019 onwards. As a matter of precaution, fresh notice of appearance was issued to the claimant for 4/11/2019 through registered post but despite that he did not cause appearance either on 4/11/2019 or on subsequent date of hearing on 7/1/2020. Ultimately this Tribunal vide order dated 7/1/2020 was constrained to reserve the matter for passing Award.

8- At the outset it is mentioned that onus was upon the claimant/workman to prove his allegations regarding termination of his services by the Management without any reason in illegal manner. The workman/claimant has failed to discharge the onus. In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass "No Dispute Award" in the matter. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 910.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 195 / 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2020 को प्राप्त हुआ था।

[सं. एल-20012/742/1997-आईआर (सीएम-1)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 910.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, Dhanbad (Ref. No. 195 of 1998) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.09.2020.

[No. L-20012/742/1997-IR(CM-1)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT: Dr. S.K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 195 OF 1998

PARTIES: : The General Secretary,
DMS, At Lalghaura
PO: Malkera,,
Distt: Dhanbad-826001
(Jharkhand).

Vs.

The General Manager,
Katrás Project Area of M/s. BCCL,
PO: Malkera, Distt: Dhanbad
(Jharkhand)-826001

Order No. L-20012/742/97-IR (C-I) dt. 09.11.1998

APPEARANCES :

On behalf of the workman/Union : Mr. S.K.Sinha . Ld. Advocate

On behalf of the Management : Mr. H. Nath Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 19th March 2020

WARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-20012/742/97-IR (C-I) dt. 09.11.1998.**

SCHEDEULE

“Whether the action of the Management of East Katras Colliery in stopping Sri Guru Manjhi from duty w.e.f. 28.08.74 is legal and justified? If not, to what relief the concerned workman entitled?”

On receipt of the Order No. **L-20012/742/97-IR(C-I) dt. 09.11.1998** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 195 of 1998 on 23.11.1998 in this Tribunal and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order notices by the Registered Post were sent to the parties concerned.

The Sponsoring Union by filling Written Statement claim under the said Reference on 04.01.1999 with serving a copy of the same to the Opposite Party stated the facts in brief as under:

- a) The workman named Guru Manjhi had been working as permanent M/Loader at East Katras Colliery since long with unblemished service track on record.
- b) That unfortunately the workman started absenting himself from duty because of illness from 06.05.1974 to 22.07.1974 due to illness.
- c) That the concerned workman absented from his duty from 06.05.1974 to 22.07.1974 due to reasonable cause of his illness and the same was duly communicated to the management.
- d) That the concerned workman after recovering from his illness reported for his duty but the anti-labour and anti-Adiavasi Management instead of allowing him to resume his duty, issued him a false and motivated charge sheet dated 30.07.1974 for absenting from his duty with effect from 06.05.1974to 22.07.1974.

- e) That the concerned workman replied to the charges stating therein the reason for absence and though the explanation of the concerned workman was satisfactory enough till then the management did not allow him to resume his duty.
- f) That the concerned workman since then sitting idle due to the illegal action of the management.
- g) That the concerned workman neither received any notice of enquiry nor any enquiry conducted in his presence or his knowledge.
- h) That the concerned workman also as yet not received any letter from the management about the so-called action of the Management.
- i) That the concerned workman represented before the Management several times for allowing him to resume his duty but as yet without any effect, except some false assurance.
- j) That after exhausting all avenues for amicable settlement and seeing no other alternative the Union on behalf of the concerned workman raised an Industrial Dispute before the A.L.C.(C)Dhanbad but the same ended in failure due to the adamant attitude of the Management. The conciliation failure referred the dispute for adjudication .
- k) That the action of the management of stopping from duty w.e.f. 28.08.1974 was illegal, arbitrary, unjustified and against the principle of natural justice.
- l) That the action of the Management of not allowing the concerned workman to resume his duty was illegal, vindictive and against the provision of the Standing Order.
- m) That the action of the management was smacks of anti-labour policy of the Management.
- n) That the workman seeks reinstatement with full back wages.

4. On the other hand Mr. H. Nath appearing on behalf of the O.P./Management filed W.S. on 01.07.2002 denying all the allegations categorically even para-wise rebuttals with counter filed written Statement on behalf of the Employers with summarized facts as hereunder:

- (a) That the present reference is not maintainable both in law and on facts.
- (b) That the concerned workman was working as Loader at East Katras Colliery. The General Secretary, Dalit Mazdoor Sangh raised an Industrial Dispute in the year 1996 before the Asstt. Labour Commissioner© Dhanbad, which was number as 1/28/96 about the dismissal of the concerned workman
- (c) After verification of the records, it has been found that the concerned workman deserted his services on his own.
- (d) That the Union during the conciliation proceeding was requested to produce the workman concerned for verification as to how he was removed from the service of the Company. The Union, however, failed to produce the workman concerned either before the Management or before the Asstt. Labour Commissioner (C)
- (e) That during a corporate level meeting was held on 19.03.1997 with Representative for Dalit Mazdoor Sangh and the re-instatement of the workman concerned was taken up. After discussion, the Union dropped the issue and also agreed to withdraw the dispute of the concerned workman from the Asstt. Labour Commissioner ©.this was also brought to the notice of the conciliation Authority.
- (f) That since the Union decided to drop the case, there should have been no reference.
- (g) That from the records of the Colliery it is found that one Guru Manjhi was appointed on 15.11.1972 . but in the Columns concerning him there is neither thumb impression nor the Photo of the workman concerned. Simply his name has been entered in Form -B Register. From the verification of C.M.P.F. Record, it has also detected that there is no contribution Card in the name of the concerned workman thereby proving that in spite of his appointment on 15.11.1972, he did not work at all.
- (h) That raising the a dispute after delay of 24 years makes the dispute and the demand a stale demand, which is not maintainable in view of the various decisions of the Hon'ble Supreme Court and the High Courts, which will be urged at the time of hearing

- (i) That anything contained in the Written Statement of the workman, if not accepted by the management, in the above paras may be denied by the management.
- (j) That in view of the above facts the workman is not entitled for employment from neither the job nor any relief whatsoever.

4. The Sponsoring Union also did not file rejoinder so did the Management. Though the list of the documents filed by the Ld. Advocate Mr. H. Nath on behalf of the Employer /Opposite Party in support of claim but the documents, in question, were neither exhibited nor marked. So long as the Sponsoring Union insisted upon to call for documents from the Management who is custodian of documents. The Management /O.P. in its Written Statement and subsequent submission did not mention anything about the issue of charge sheet for long absence. Rather it questioned the working and continuance in service by the concerned workman since beginning. Therefore, the workman was asked to file original copy of charge sheet if issued to substantiate his claim in the absence the Management doing so.

5. In course of long drawn proceeding of hearing of the case advanced to the stage of hearing argument on merit just one step behind before finally adjudication . But under the shield of different pretexts the hearing was deferred time and again without any significant move on the part of the Sponsoring Union/workman,who raised the Industrial Dispute, appeared to be not desirous to contest the case on merit by exposing prolonged absence. The matter kept on adjourned viz. on 05.12.2005, 10.03.2006, 01.06.2006, 28.08.2006, 24.07.2014, 23.09.2014, 11.11.2014, 05.01.2015, 24.02.2015, 28.04.2015, 25.06.2015, 21.08.2015, 18.09.2015, 26.11.2015, 30.03.2016, 16.06.20, 16.09.08.2016, 09.05.2019 and finally on 15.01.2020.as there were no less than nineteen adjournments that took place in the line of the natural justice apart from stepping on 16.04.2019 and 19.12.2020.Though the Tribunal's observation vide order dt. 05.08.2005 came that the domestic enquiry on preliminary point against the workman could not be determined as fair and proper and in consonance with principle of natural justice as there was no materials to draw the conclusion if any domestic enquiry was ever held against the workman or not . Though the Reference advanced to the edge of final hearing of argument by the parties stagnated since 05.12.2005.

6. Notices dtt. 13.07.2001, 18.02.2002, 04.01.1999, 08.11.2005, 24.07.2014, 11.11.2014 and in fresh spell of notices dt.18.04.2019 19.12.2019 were issued both litigant parties under registered post as the case was once again scheduled to be resumed for hearing over argument of hearing fixing the date on 09.05.2019 but on date none appeared from either side so the Case was again adjourned after reviewing fixing the date on 15.01.2020 but this time again same situation the Tribunal had to witness with none appearance from either side. There was no other option under the state of unwillingness of the Union side /workman by whose efforts the Reference case stood ,do not show seriousness to pursue the case to finality left behind just one step to cover of final adjudication .

7. Apparently the Industrial Dispute Case was set on 15.01.2020 to resume hearing final over hearing of argument but what transpires from record either from workman nor management was reportedly found present In the last spell two notice were issued to the parties finally over the stage of evidence of on the part of the Management /O.P. for hearing argument. The materials on case record is indicative of the fact that workman consecutively proved failure for appearance to proceed with hearing of the case over argument on merit in the backdrop of ample opportunity provided to the Union/workman. The hearings on argument has been kept pending since 05.12.2005 without assigning any cogent reasons thereof. The approach of the workman appears to be very casual and indifferent since they seem to be least interested to get the case to final adjudication. As the Tribunal fully convinced not merely through materials on record but by the posture of the Sponsoring Union /workman that the matter of dispute seems to be over or of no merit by now.

8. On perusal of submission of both sides and going though the materials on record, I find no scope to continue with this case further for adjudication in the absence of unwillingness of the Sponsoring Union having good cause to go on merit as the Sponsoring Union did not let the case move to it finality on adjudication. Undoubtedly the party concerned (workman) has not acted diligently to decide the matter on merits but conspicuously silent to resume hearings as and whenever called for. The Reference case was originally in the year back 1998 spanning more than twenty years with no breakthrough since 05.12.2005.

9. On the face of fact that the workman no longer needs any relief from the Management of Katras Project Area of M/s. BCCL, Dhanbad to be granted in this case matter under the state of sheer reluctance, the Industrial Dispute Reference Case is dispensed with the firmness that no specific relief under Reference needs be addressed by the O.P./Management by now for the workman concerned in this case.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 911.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (10/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हुआ था।

[सं. एल-12012/36/2012-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 05.10.2020.

[No. L-12012/36/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

अनुबंध

केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 10/2013

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-12012/36/2012-IR(B-II) दिनांक 23/11/2012

गंगा सिंह पुत्र श्री भैरू सिंह राठौड़
निवासी उस्ता बारी के बाहर बीकानेर
महामंत्री, राजस्थान कैजुअल लेबर यूनियन,
डागा स्कूल के पास, बीकानेर।

v/s

1. जनरल मैनेजर, यूको बैंक, प्रधान कार्यालय,
10 बी.टी.एम. सरणी, कोलकाता।
2. शाखा प्रबंधक, यूको बैंक,
शहर शाखा भुजिया बाजार, बीकानेर।

प्रार्थी की तरफ से : श्री शिव अवतार सिंह –अभिभाषक

अप्रार्थी की तरफ से : श्री सुरेन्द्र सिंह – अभिभाषक

: अधिनिर्णय :

दिनांक : 14.07.2020

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 23.11.2012 को निम्नांकित ऑद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (डी) एवं 2 (ए) के प्रावधानों के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को संदर्भित किया गया :—

“Whether the action of the management of UCO Bank, Bikaner to terminate the services of Shri Ganga Singh, w.e.f., 17/12/2008 is fair, legal and justified. What relief the concerned workman is entitled to?”

2. इस सन्दर्भ के प्राप्त होने पर उभयपक्ष को आहूत किया गया तथा प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. इस निर्देश के अनुपालन में दिनांक 3.2.2014 को प्रार्थी की ओर से दावे का अभिकथन प्रस्तुत किया गया। प्रार्थी का कथन है की उसकी प्रथम नियुक्ति दिनांक 6.7.2005 को विपक्षी बैंक की शहर शाखा भुजिया बाजार बीकानेर में मौखिक आदेश से आकस्मिक श्रमिक के रूप में की गई। प्रार्थी की सेवा दिनांक 17.12.2008 को शाखा प्रबंधक

श्री एस. के. जैन द्वारा मौखिक आदेश से समाप्त कर दी गई। प्रार्थी ने दिनांक 6.7.2005 से 17.12.2008 तक लगातार कार्य किया और एक कैलेण्डर वर्ष की अवधि में 240 दिन से अधिक कार्य भी किया। प्रार्थी की सेवासमाप्ति के पूर्व अधिनियम की धारा 25 (एफ) के प्रावधानों का अनुपालन नहीं किया। प्रार्थी को हटाने के बाद श्री प्रदीप कंडारा को नियुक्त किया गया। विपक्षी ने वरिष्ठता सूची का प्रकाशन नहीं किया और “पहले आये और पीछे जायें” सिद्धान्त का पालन भी नहीं किया। इस प्रकार विपक्षी ने अधिनियम की धारा 25 (जी), (एच) तथा नियम 77 के प्रावधानों का उल्लंघन भी किया है। अतः वाद स्वीकार कर प्रार्थी को सेवा की निरन्तरता एवं समस्त परिलाभ दिलाते हुए सेवा में बहाल किया जावें।

4. विपक्षी ने दिनांक 1.5.2014 को वादोत्तर प्रस्तुत करते हुए यह कहा है कि प्रार्थी को विपक्षी के अधीन बैंक के नियमानुसार एवं निर्धारित चयन प्रक्रिया अपना कर नियमित कर्मचारी के रूप में नियुक्त नहीं दी गई। दिनांक 6.7.2005 से 17.12.2008 तक कार्य करने का कथन आधारहीन एवं मिथ्या होने से अस्वीकार है। प्रार्थी एवं विपक्षी के मध्य कर्मचारी और नियोक्ता का सम्बन्ध नहीं रहा। प्रार्थी की सेवायें अंशकालीन आक्रिमिक मजदूर के रूप में कार्य की उपलब्धता एवं कार्य पूरा होने तक कभी कभार ली जाती थी। जिसका काम के हिसाब से मजदूरी का भुगतान किया जाता था। विपक्षी की भुजिया बाजार बीकानेर में श्री हुकमचन्द भादाणी नियमित रूप से नियुक्त अधीनस्थ कर्मचारी है। जो विगत 24 वर्ष से निरन्तर सेवारत है। उक्त श्री हुकमचन्द भादाणी की अनुपस्थिति, अवकाश या प्रशिक्षण में जाने पर ही कार्य आधिक्य होने पर प्रार्थी को कार्य करने का मौखिक ठेका दिया जाता था। प्रार्थी, चूंकि अस्थायी था उसका नाम नियमित कर्मचारियों की वरिष्ठता सूची में प्रकाशित करने का कोई प्रश्न ही उत्पन्न नहीं होता। विपक्षी द्वारा प्रार्थी की सेवामुक्ति नहीं की गई इसलिये अधिनियम की धारा 25 (एफ) के अन्तर्गत नोटिस, नोटिस वेतन एवं प्रतिकर दिये जाने का कोई अवसर ही उत्पन्न नहीं हुआ। अतः वाद निरस्त किया जावें।

5. प्रार्थी ने 16.10.2014 को अतिरिक्त कथन प्रस्तुत करते हुए वादोत्तर में किये गये विपक्षी के कथन को अस्वीकार किया और कहा कि तत्कालीन शाखा प्रबंधक श्री एस. के. जैन ने प्रार्थी को पिछले 6 वर्ष से कार्यरत होने का प्रमाण पत्र दिनांक 23.9.2008 को दिया है। प्रार्थी ने एक कैलेण्डर वर्ष की अवधि में विपक्षी के अधीन 240 दिन से अधिक कार्य किया है। प्रार्थी ने कभी ठेका नहीं लिया। अतः वाद में वान्धित अनुतोष दिया जावें।

6. प्रार्थी ने अपने साक्ष्य में स्वयं प्रार्थी गंगासिंह को परीक्षित किया और प्रलेखिय साक्ष्य में प्रदर्श डब्ल्यू-1 से 11 तक प्रलेखों को प्रदर्शित किया।

7. विपक्षी की ओर से अपने साक्ष्य में श्री कुणाल कपिला, वरिष्ठ प्रबंधक को परीक्षित किया। प्रलेखिय साक्ष्य में कोई प्रलेख प्रदर्शित नहीं किया। विपक्षी की ओर से श्री सुबोध कुमार गुप्ता का भी शपथ पत्र प्रस्तुत किया गया था। किन्तु स्थानान्तरण हो जाने से इस साक्षी को परीक्षित न करते हुए श्री कुणाल कपिला, वरिष्ठ प्रबंधक को परीक्षित किया गया।

8. दिनांक 2.3.2020 को मैनें उभयपक्ष के तर्क सुने एवं उपलब्ध साक्ष्य का विवाद के सन्दर्भ में परिशीलन किया। तदुपरांत कोविड-19 महामारी से उपजनित परिस्थितियों के कारण दि. 30.3.2020 को अधिनिर्णय नहीं सुनाया जा सका एवं आज हेतु स्थगित किया गया।

9. अभिभाषक प्रार्थी का यह तर्क है कि प्रार्थी ने अपने साक्ष्य से विपक्षी के अधीन दिनांक 6.7.2005 से 17.12.2008 तक कार्य करना और एक कैलेण्डर वर्ष की अवधि में विपक्षी के अधीन 240 दिन से अधिक कार्य करना भी प्रमाणित किया है। प्रार्थी ने इस अवधि के वेतन वाउचर विपक्षी से प्रस्तुत करवाने का निवेदन किया था किन्तु विपक्षी द्वारा उक्त वाउचर प्रस्तुत नहीं किया गये जो कि विपक्षी के ही अधिपत्य में है। इसलिये विपक्षी के विरुद्ध प्रतिकूल उपधारणा की जानी चाहिये और प्रार्थी का कथन प्रमाणित मान लिया जाना उचित होगा। प्रदर्श डब्ल्यू-1 प्रमाण पत्र विपक्षी द्वारा ही जारी किया गया है। जिसमें विगत 6 वर्षों से प्रार्थी का सेवारत होना शाखा प्रबंधक ने प्रमाणित किया है। अतः वाद स्वीकार किया जावें।

10. विपक्षी के अभिभाषक ने अपने तर्क में नियमित कर्मचारी श्री हुकमचन्द भादाणी के अनुपस्थित रहने पर या कार्य अधिक होने पर आवश्यकतानुरूप प्रार्थी से कार्य करवाना और मजदूरी का भुगतान करना कहा है। उनका यह प्रबल तर्क है कि चूंकि प्रार्थी आक्रिमिक श्रमिक के रूप में कार्य करता था इसलिये कोई नियमित उपस्थिति रजिस्टर या भुगतान का मस्टररोल संधारित नहीं किया जाता था। जिस दस्तावेज का अस्तित्व ही न हो उसे न तो प्रस्तुत किया जा सकता है और ना ही प्रस्तुत न कर पाने के परिणामस्वरूप प्रतिकूल उपधारणा विपक्षी के प्रति की जा सकती है। प्रार्थी पर ही यह दायित्व आरोपित था कि वह सेवासमाप्ति के पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में 240 दिन कार्य करने का तथ्य अपनी साक्ष्य से प्रमाणित करें किन्तु प्रार्थी ने इस दायित्व का निर्वहन नहीं किया है। इसलिये प्रार्थी के वाद में कोई सार नहीं है। प्रार्थी से कनिष्ठ किसी व्यक्ति को सेवा में नहीं रखा गया। दिनांक 23.9.2008 को प्रदर्श डब्ल्यू-1 प्रमाण पत्र को प्रार्थी ने विपक्षी के शाखा प्रबंधक श्री एस. के. जैन द्वारा जारी किया जाना प्रमाणित नहीं किया है। यदि इसे प्रमाणित मान लिया जावें तो भी इस प्रमाण पत्र में वर्णित तथ्य प्रार्थी के दावे के कथनों से विरोधाभासी हैं। प्रार्थी ने दिनांक 6.7.2005 से कार्य करना कहा है जबकि प्रदर्श डब्ल्यू-1 प्रमाण पत्र में दिनांक 23.9.2008 को ही पिछले 6 वर्ष से प्रार्थी का सेवारत होना वर्णित है। इसलिये इस प्रमाण पत्र को किसी प्रकार विश्वसनीय नहीं माना जा सकता है। उन्होंने अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये हैं :—

(1) (1996) 7 S.C.C. 562 स्टेट ऑफ हिमाचल प्रदेश / सुरेश कुमार वर्मा

(2) AIR 2006 सुप्रिम कोर्ट 1806 सैकेट्री, स्टेट ऑफ कर्नाटक/उमादेवी व अन्य
 (3) (2019) 1 S.C.C. (L & S) 138 मोहम्मद अली / स्टेट ऑफ हिमाचल प्रदेश
 (4) AIR 2002 सुप्रिम कोर्ट 1147 रेंज फोरेस्ट ऑफिसर/एस.टी. हादीमनी
 (5) 2006 S.C.C. (L & S) 38 सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत/डाह्याभाई अमरसिंह
 (6) 2004 (5) S.L.R. 816 म्यूनिसिपल कार्पोरेशन फरीदाबाद/सीरी निवास

11. उभयपक्ष के तर्कों एवं साक्ष्य के मनन के पश्चात इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए हैं—

विचारणीय बिन्दु संख्या 1 :— क्या प्रार्थी ने विपक्षी के अधीन सेवासमाप्ति दिनांक 17.12.2008 से पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में विपक्षी के अधीन 240 दिन से अधिक कार्य किया? किन्तु विपक्षी द्वारा सेवासमाप्ति के पूर्व अधिनियम की धारा 25 (एफ) के प्रावधानों का अनुपालन न करने से सेवासमाप्ति अवैध है ? प्रार्थी

विचारणीय बिन्दु संख्या 2 :— क्या प्रार्थी की सेवासमाप्ति के पूर्व विपक्षी द्वारा वरिष्ठता सूची का प्रकाशन नहीं करते हुए प्रार्थी से कनिष्ठ व्यक्ति को सेवा में रखा गया ? इसलिये प्रार्थी की सेवासमाप्ति अवैध है ? प्रार्थी

(3) अनुतोष ?

विचारणीय बिन्दु संख्या 1 :— प्रार्थी ने अपने सशपथ कथनों में यह कहा है कि उसने दिनांक 6.7.2005 से 17.12.2008 तक विपक्षी की भुजिया बाजार शाखा में आकस्मिक श्रमिक के रूप में कार्य किया है। प्रतिपरीक्षा में प्रार्थी गंगासिंह स्वीकार करता है कि उसने कोई लिखित नियुक्ति पत्र पेश नहीं किया है। प्रार्थी ने यह भी कहा कि उसकी नियुक्ति तिथि 6.7.2005 के रथान पर 6.7.2002 होनी चाहिए। प्रार्थी ने अपने दावे के अभिकथन में भी नियुक्ति तिथि 6.7.2005 ही अंकित की है। उसने अभिवचनों में संशोधन हेतु कोई प्रार्थनापत्र भी अधिकरण के समक्ष प्रस्तुत नहीं किया है। इसलिये इस स्थिति में प्रार्थी के अभिवचन और साक्ष्य में उत्पन्न यह विरोधाभास प्रार्थी के कथनों को संदिग्ध एवं अविश्वसनीय बनाता है। यदि उसकी नियुक्ति तिथि 6.7.2002 होती (जिसका कि कोई आधार ही प्रस्तुत नहीं हुआ है) तो प्रार्थी के समक्ष ऐसी कोई बाध्यता नहीं थी कि दावे के अभिकथन और साक्ष्य के शपथ पत्र दोनों में नियुक्ति तिथि 6.7.2005 लिखवाता और उसे संशोधित करने का कोई प्रयास भी नहीं करता। इस स्थिति में यह सम्भव प्रतीत होता है कि प्रार्थी ने दिनांक 7.9.2016 को जो प्रलेख फोटोकॉपी के रूप में प्रस्तुत किये उनमें प्रदर्श डब्ल्यू-1 प्रमाण पत्र भी सम्मिलित था। यह प्रदर्श डब्ल्यू-1 प्रमाण पत्र दिनांक 23.9.2008 को जारी किया गया और इसमें पिछले 6 वर्षों से प्रार्थी का विपक्षी बैंक में सेवारत होना अंकित था। प्रार्थी ने दिनांक 23.2.2017 को किये गये प्रतिपरीक्षण के दौरान अपनी सेवा, प्रमाण पत्र के अनुसार छः वर्ष पूर्ण करना दर्शाने के लिये ही नियुक्ति तिथि 6.7.2005 की जगह 6.7.2002 होना कहा है जो कि विश्वसनीय नहीं है।

12. विपक्षी का यह कथन है कि प्रार्थी को कार्य की आवश्यकता होने पर यदा-कदा कार्य पर रखा जाता था क्योंकि बैंक की उक्त शाखा में श्री हुकमचन्द भादाणी नामक नियमित कर्मचारी नियुक्त था। उसके अवकाश पर होने पर ही प्रार्थी से कार्य लिया जाता था। प्रार्थी ने भी इस तथ्य को स्वीकार करते हुए कहा है कि श्री हुकमचन्द भादाणी उसकी सेवा में आने से पूर्व ही कार्यरत है और अब भी कार्य कर रहे हैं। प्रदर्श डब्ल्यू-7 प्रलेख से भी यह प्रकट होता है कि दिनांक 10.7.2008 से 20.11.2008 तक की अवधि में मात्र 20.11.2008 को ही प्रार्थी के हस्ताक्षर है एवं शेष तिथियों पर श्री हुकमचन्द भादाणी के हस्ताक्षर विद्यमान हैं।

13. प्रदर्श डब्ल्यू-1 प्रशंसा पत्र को बैंक की नियमित प्रक्रिया के अधीन जारी किया जाना भी प्रकट नहीं होता है क्योंकि इस प्रमाण पत्र पर बैंक की कोई निर्गमन संख्या अंकित नहीं है और न ही इस प्रमाण पत्र को विपक्षी द्वारा स्वीकार किया गया है। प्रार्थी ने इस प्रमाण पत्र को जारी करने शाखा प्रबंधक को साक्ष्य में परीक्षित करने का कोई प्रयास भी नहीं किया है। यह भी उल्लेखनीय है कि इस प्रमाण पत्र में प्रार्थी की नियुक्ति तिथि तथा पद जिस पर प्रार्थी कार्यरत है, का भी उल्लेख नहीं है। इस प्रमाण पत्र को प्रार्थी के दावे में वर्णित नियुक्ति तिथि 6.7.2005 के प्रमाणमस्वरूप भी ग्रहण नहीं किया जा सकता है, क्योंकि प्रमाण पत्र जारी करने की दिनांक 23.9.2008 को विगत 6 वर्ष से प्रार्थी यदि बैंक में यदि कार्यरत होता तो उसकी नियुक्ति दिनांक 23.9.2002 के आसपास की कोई तिथि होती। इस प्रकार प्रार्थी इस प्रमाण पत्र के आधार पर विपक्षी बैंक में स्वयं के नियुक्त होने का तथ्य प्रमाणित नहीं कर सका है।

14. प्रदर्श डब्ल्यू-2 और 3 प्रलेखों से कोई तथ्य प्रकट नहीं होता क्योंकि इनमें कोई तथ्य वर्णित नहीं है और ये फोटोकॉपी मात्र हैं। प्रदर्श डब्ल्यू-4 प्रार्थी को दिनांक 11 से 13.12.2008 तक किये गये 300 रुपये के भुगतान का वाउचर है। प्रदर्श डब्ल्यू-5 दिनांक 16.7.2005 को प्रार्थी को किये 200 रुपये के भुगतान से सम्बन्धित है। इसी प्रकार प्रदर्श डब्ल्यू-6 दिनांक 18.2.2006 को 300 रुपये का भुगतान किये जाने से सम्बन्धित वाउचर है। प्रदर्श डब्ल्यू-8 से 11, चपरासी बही के पृष्ठों की फोटोकॉपी है जिस पर प्रार्थी से सम्बन्धित कोई विवरण अंकित न होने से साक्ष्य की दृष्टि से उनका कोई महत्व नहीं है।

15. दिनांक 16.10.2014 को प्रार्थी ने दिनांक 6.7.2005 से 17.12.2008 तक के वेतन वाउचर विपक्षी से प्रस्तुत करवाने का निवेदन किया है। विपक्षी ने प्रतिउत्तर में इस अवधि में प्रार्थी के कार्यरत होने के तथ्य को अस्वीकार किया है तथा आकस्मिक रूप से करवाये गये कार्य का कोई पृथक से अभिलेख न रखे जाने का कथन भी किया है। विपक्षी ने अपने प्रतिउत्तर के समर्थन में श्री मनोज कुमार गोस्वामी एवं श्री सुबोध कुमार गुप्ता के शपथ पत्र भी प्रस्तुत किये हैं। इस प्रकार प्रार्थी द्वारा वांछित प्रलेखों का अस्तित्व में होना ही प्रमाणित नहीं हुआ है। इसलिये विपक्षी द्वारा इन प्रलेखों को प्रस्तुत न किये जाने के कारण (जिन्हें शपथ पत्र द्वारा पुष्ट भी किया गया है) इन प्रलेखों को प्रस्तुत किया जाना

सम्भव प्रतीत नहीं होता है। प्रार्थी ने माननीय सर्वोच्च न्यायालय के निर्णयों रेज फोरेस्ट ऑफिसर/एस.टी. हादीमनी, सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत/डाह्याभाई अमरसिंह एवं म्यूनिसिपल कार्पोरेशन फरीदाबाद/सीरी निवास के निर्णयों का अवलम्ब लिया है। इन निर्णयों में माननीय उच्चतम न्यायालय ने यह मार्गदर्शन दिया है कि एक कर्मकार द्वारा नियोजक के अधीन सेवासमाप्ति के पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में 240 दिन की सेवा पूर्ण कर लेने का तथ्य प्रमाणित करने का प्राथमिक सिद्धाभार स्वयं कर्मकार पर होता है। यदि कर्मकार सेवा सम्बन्धी प्रलेखों को नियोजक से प्रस्तुत करवाने का नियेदन करें, किन्तु ऐसे प्रलेख या तो अस्तित्व में ही ना हो या प्रार्थी ने प्राथमिक साक्ष्य भी प्रस्तुत न की हो तो नियोजक द्वारा वान्छित प्रलेखों को प्रस्तुत न किये जाने पर नियोजक के विरुद्ध प्रतिकूल उपधारणा नहीं की जा सकती है।

16. माननीय उच्चतम न्यायालय ने मोहम्मद अली/स्टेट ऑफ हिमाचल प्रदेश के निर्णय में यह कहा है कि यदि कर्मकार सेवासमाप्ति के पूर्व 1 वर्ष में 240 दिन की सेवा किये जाने का तथ्य प्रमाणित न करें तो उसे अधिनियम की धारा 25 (एफ) के प्रावधानों का संरक्षण नहीं दिया जा सकता है।

17. इन निर्णयों में पारित विधि के प्रकाश में यह स्पष्ट है कि प्रार्थी विपक्षी के अधीन सेवासमाप्ति के पूर्व एक वर्ष की अवधि में 240 दिन सेवा पूर्ण करने का तथ्य प्रमाणित करने में विफल रहा है। इसलिये अधिनियम की धारा 25 (एफ) के अन्तर्गत सेवासमाप्ति के पूर्व एक माह का नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान विपक्षी द्वारा किये जाने का कोई अवसर भी नहीं हुआ है। इसलिये यह विचारणीय बिन्दु प्रार्थी के विरुद्ध निर्णीत किया जाता है।

18. विचारणीय बिन्दु संख्या 2 :— प्रार्थी ने अपनी साक्ष्य में यह कहा है कि प्रार्थी की सेवासमाप्ति करने के पूर्व नियमानुसार वरिष्ठता सूची का प्रकाशन विपक्षी ने नहीं किया और प्रार्थी से कनिष्ठ कर्मचारी अब भी कार्यरत हैं। प्रार्थी को हटाने के बाद श्री प्रदीप कंडारा को रखा गया है। प्रतिपरीक्षा में प्रार्थी का कथन है कि उसे हटाने के बाद स्वीपर के पद पर श्री प्रदीप कंडारा को लगाया गया। जो उसकी माता के हटने के बाद लगा। उसके पहले श्री प्रदीप कंडारा की माता स्वीपर का कार्य करती थी। प्रार्थी ने यह भी स्वीकार किया है कि उसने कभी स्वीपर का कार्य ब्रान्च में नहीं किया तथा सेवासमाप्ति के उपरान्त बैंक में नियुक्ति के लिये उसने कोई आवेदन भी नहीं किया। इस प्रकार यह स्पष्ट हो जाता है कि श्री प्रदीप कंडारा की नियुक्ति पानी भरने, चेक व ड्राफ्ट बनवाने आदि के कार्य के लिये होना कहकर आया है। जबकि श्री प्रदीप कंडारा स्वीपर के पद पर नियुक्त किया गया था। इसलिये कनिष्ठ और वरिष्ठ होने सम्बन्धि कोई स्थिति कार्य की प्रकृति भिन्न होने उत्पन्न ही नहीं हुई। प्रार्थी की नियुक्ति किसी नियमित पद के विरुद्ध चयन प्रक्रिया अपनाते हुए नहीं की गई है। दैनिक वेतन भोगी कर्मचारियों की कोई वरिष्ठता सूचि बनाये जाने और उसके प्रकाशन की अपेक्षा विपक्षी से इसलिये भी नहीं की जानी चाहिये कि प्रार्थी के अतिरिक्त मात्र श्री हुकमचन्द भादाणी नियमित कर्मचारी के रूप में कार्यरत था। प्रार्थी ने यह नहीं कहा है कि दैनिक वेतन भोगी आकस्मिक कर्मकार की कोई वरिष्ठता सूची विपक्षी ने बना रखी हो, जिसे प्रस्तुत नहीं किया गया। माननीय सर्वोच्च न्यायालय ने सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत/डाह्याभाई अमरसिंह के निर्णय में यह कहा है कि वरिष्ठता सूचि के अस्तित्व में होने से सम्बन्धित किसी प्रमाण के अभाव में अधिनियम की धारा 25 (जी) एवं (एच) के अपालन के अधार पर कोई अनुतोष नहीं दिया जा सकता। नियोजक से यह अपेक्षा नहीं की जानी चाहिये की वे दैनिक वेतन भोगी कर्मचारियों की वरिष्ठता सूची बनाये। साक्ष्य की इस स्थिति में प्रार्थी उससे कनिष्ठ व्यक्ति को विपक्षी द्वारा सेवा में रखे जाने का तथ्य प्रमाणित नहीं कर सका है। इसलिये माननीय उच्चतम न्यायालय द्वारा पारित अधिमत के अनुसरण में प्रार्थी अधिनियम की धारा 25 (जी) एवं (एच) के प्रावधानों का संरक्षण प्राप्त करने का अधिकारी नहीं है। अतः यह विचारणीय बिन्दु प्रार्थी के विरुद्ध निर्णीत किया जाता है।

19. अनुतोष :—विचारणीय बिन्दु संख्या 1 व 2 प्रार्थी के विरुद्ध निर्णीत होने के कारण विपक्षी बैंक के प्रबंधन द्वारा दिनांक 17.12.2008 को प्रार्थी की कथित रूप से की गई सेवासमाप्ति प्रमाणित नहीं हुई है। प्रार्थी को आकस्मिक रूप से कार्य की आवश्यकता के अनुरूप कार्य पर रखा गया। जिसका भुगतान उसे कर दिया गया। इसलिये प्रार्थी अधिनियम की धारा 25 (एफ), (जी) एवं (एच) का संरक्षण प्राप्त करने का अधिकारी नहीं है।

20. अधिनियम तदनुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

21. अधिनियम की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 5 अक्टूबर, 2020

का. आ. 912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोवीन के पंचाट (संदर्भ सं. 18/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हुआ था।

[सं. एल-12012/87/2012-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, ERNAKULAM, COCHIN as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 05.10.2020.

[No. L-12012/87/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 24th day of February 2020, 5 Phalgun 1941)

ID No. 18/2013

Workman : Shri. Dineshkumar B.
Puthenveedu
Perumbavoor
Ernakulam - 683542
By Adv. Ashok B. Shenoy

Management : The Assistant General Manager
Bank of Baroda
T.D. Road
Ernakulam –682011
By M/s. B.S. Krishna Associates

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 24.02.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/87/2012-IR(B-II) dated 05.03.2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the Management of Bank of Baroda in terminating the services of Shri. Dineshkumar from the post of temporary/part time sweeper from Perumbavoor branch is illegal ? What benefit he is eligible to get ? ”

3. The workman herein was employed in the subordinate cadre as Peon in the service of the management bank at their Perumbavoor branch in Ernakulam district. He was employed in the service of the Perumbavoor branch from 13.07.2009. He had been employed continuously and regularly against regular and permanent vacancy to do regular and permanent nature duties of Peon. On 07.01.2012, the services of the workman was terminated by the Manager of the Perumbavoor branch orally. The workman raised an industrial dispute before the Assistant Labour Commissioner(Central) on 28.11.2011. The conciliation proceedings ended in failure on 16.10.2012. According to the workman the termination of his service amounts to retrenchment. The workman was employed continuously from 13.07.2009 to 07.01.2012 and he was retrenched from service of the Bank without any notice of retrenchment or wages in lieu of such notice as mandated by Sec 25F of the ID Act 1947. The management did not pay any retrenchment compensation as mandated in Sec 25F of ID Act, 1947. Retrenchment of workman’s service is therefore illegal, unjust and also null and void. It is also illegal, unjust and void for violation of provisions of Para 522, 523 and 524 of Sastri Award. Employees much junior in service to the workman are retained in service by the management. This is in violation of mandatory provisions of Sec 25G of the ID Act, 1947 and Para 507 of Sastri Award. The management employed fresh and new hands in service of the management against the very same work for which the workman was employed. This is in violation of Sec 25H of ID Act, 1947 and Clause 20.12 of 1st Bipartite settlement dt.19.10.1996 and Para 493 of Sastri Award. Hence the termination of the workman is illegal and is stained by malafide and victimization. The

workman was treated by the management as temporary workman against permanent vacancy just to deprive him off the status and privilege of a permanent workman. By adopting this practice, the management was indulging in unfair labour practice prohibited U/s 25T of ID Act, 1947 and Para 495 and 522 of Sastri Award. In terms of clause 20.12 of the 1st Bipartite Settlement dt.19.10.1966 the management is bound to retain and absorb the workman in regular service especially when the vacancy against which he was employed is permanent and continues to exist. Since retrenchment the workman is without any job and income. Hence the workman pleaded that the action of the management in terminating the services of the workman w.e.f. 07.01.2012 be declared illegal and unjust and also declare that he be reinstated in service of the management with full back wages, continuity of service and other attended benefits.

4. The management filed written statement denying the above allegations. The workman was neither employed in the Bank nor any letter of appointment was issued to him and therefore, there is no question of terminating his service.

5. The management is a nationalized public sector Bank with prescribed rules and policies in the matter of recruitment into its regular service. For appointment in the subordinate cadre, recruitment is made through notification to Employment Exchange and after complying with the formalities of test and interview. The instructions and guidelines of Govt. of India and Reserve Bank of India in the matter of reservation are also strictly followed in the matter of recruitment. The competent authority for sanctioning of regular post in the subordinate staff cadre in the management Bank is General Manager (HRM) and the appointing authority is the Regional Head. The Branch Manager can neither sanction nor appoint staff in the subordinate cadre in the management Bank. The workman in the dispute was not appointed in the management Bank by the competent authority. He was not engaged in any regular vacancy in any branch of the Bank. He was not appointed an employee of the management Bank. There is no employer-employee relationship between the workman and the management. The workman was intermittently engaged as daily wager on casual/temporary basis at the Perumbavoor branch of the management Bank during 13.07.2009 to 07.01.2012. He was being paid appropriate wages on daily basis. He was not engaged 240 days at any point of time. He was not engaged against a sanctioned post in the management Bank. The workman was not subjected to any recruitment process by the management Bank and no appointment letter was given to him. The workman was engaged by Branch Manager who is not the appointing Authority or the sanctioning Authority in the management Bank. Temporary and casual engagements on day to day basis will not create any right of employment in the management Bank. The workman was engaged intermittently as daily wager from 13.07.2009 to 07.01.2012 as Peon. His engagement for 240 days or above alone will not entitle him to claim reinstatement or regularization in the service of the Bank. His engagement was through Branch Manager who is not the competent appointing Authority for subordinate staff in the management Bank. The management is a public sector Bank and is a "State" under Article 12 of the Constitution of India. Appointment to any post in the management is made only after complying with the statutory rules, regulations and directions issued by Govt. of India from time to time. The appointment in the subordinate staff cadre is to be made by the competent authority only against sanctioned vacancies and also subject to fulfillment of eligibility criteria for such appointment. The appointment to the subordinate cadre can be done only through Employment Exchange. If suitable candidates are not available with Employment Exchange, the management can explore other sources of recruitment. The workman in this case was never sponsored by Employment Exchange and not subject to any recruitment procedure. The action of the management in dis-engaging the service of the workman is proper, legal and valid and there is no violation of the provisions of the ID Act or the provisions of the Sastri Award. It is baseless and incorrect to allege that the management has violated Sec 25F, 25G and 25H of the ID Act and the provisions of Bipartite Settlement and Sastri Award. It is baseless and incorrect to allege that the management is in the habit of employing workman against permanent vacancies one after another and retrench them to be replaced by new hands. The management denied any unfair labour practice or violation of provisions of ID Act, Bipartite Settlement and Sastri Award. Constitution of India envisages right of equality and equal opportunity in the matter of public employment under Article 14 and 16 of the Constitution. There is no fundamental right in those who have been employed on daily wages or on contractual basis to claim regularization and absorption in the regular service.

6. The workman filed replication denying the allegations in the written statement filed by the management. The workman specifically denied the allegation of the management that he was not employed in the Bank and therefore there was no question of terminating his service. The workman was appointed as a Peon in the Perumbavoor branch of the management Bank on 13.07.2009 when the branch was opened against a permanent vacancy of Peon in the branch. No permanent peon was posted in the branch from 13.07.2009 to 07.01.2012. The workman was employed continuously and regularly against a permanent vacancy to do regular and permanent nature of duties of Peon. The workman was entrusted with the duties of permanent nature in the branch. The workman herein was entrusted with the duties of a Peon and had been under the supervision of the

branch authorities. He had access to all areas in the premises including the security area of the branch. The workman was being paid wages against wage voucher slips and is accounted against Bank's profit & loss account. He was also being paid bonus from the date of his employment till his termination on 07.01.2012. The engagement of the workman by the Bank was continuous without break and was paid wages even on holidays as given to permanent employees. The management Bank is having 85 branches and 2 Administrate Offices in Kerala and the permanent employees working in the state in the subordinate cadre is only 90. There are considerable number of temporary sub staff entrusted with duties of permanent nature. The management had regularized 37 temporary sub staff entrusted with duties of permanent nature during the years 2009-2010 and 2011. As many as 1966 officers were recruited through campus selection and the averment of the management that the recruitments are done only through proper notification and selection process is only to justify the denial of employment to the workman. After retrenchment of the workman w.e.f. 07.01.2012, a new temporary employee is engaged by the management in Perumbavoor branch without affording the workman an opportunity for re-employment. Sponsorship by Employment Exchange is not a condition precedent for employment in the post and job against which the workman herein was employed in the management Bank. Permanent employment is denied to the workman by the management Bank only to deny him the benefits available to permanent employees.

7. On completion of pleadings, the workman examined WW1 and WW2 and marked Exbts. W1 to W10. Exbt. W3 and W5 to W10 were marked subject to objection as the documents were not related to the management Bank. Management examined MW1 and MW2 and marked Exhibits M1 to M8. Evidence of MW2 is common to ID no.10/2013, ID nos.18/2013, 19/2013 and 20/2013.

8. On the basis of the reference the issues to be decided are;

1. Whether the termination of Sri.Dineshkumar from the post of temporary/ part time sweeper from Perumbavoor branch is illegal?

2. Relief and cost

9. Issue No. 1

In the reference received from the Central Govt, the issue that is referred is whether the termination of Sri.Dineshkumar from the post of temporary/ part time sweeper is legal? However from the claim statement it is seen that the claim of the workman is that he was working as Peon in the management Bank from the date of opening of the branch at Perumbavoor branch. Since temporary sweeper and Peon are in the sub staff category of the management Bank, it is taken that the reference is with regard to termination of temporary Peon and the same is answered accordingly. According to the workman, he was employed in the service of the management Bank at Perumbavoor branch from 13.07.2009 when the Perumbavoor branch of the management Bank commenced its operation. He was engaged as Peon and continued to be employed till 07.01.2012 continuously and regularly against the regular and permanent vacancy and was doing regular and permanent nature of duties. On 07.01.2012 his services were orally terminated by Branch Manager. According to the learned Counsel for the workman the oral termination of the workman amounts to retrenchment. However he was not issued with any notice of retrenchment nor wages in lieu of notice as mandated by Sec 25F of ID Act, 1947. The retrenchment of the workman's service is therefore illegal, unjust and null and void in law. It is also in violation of Paras 522, 523 and 524 of Sastri Award. According to the learned Counsel for the management, the workman was never employed by the management Bank and intermittently used his service between 13.07.2009 to 07.01.2012 and he was paid daily wages for the services rendered by him. His engagement was only temporary/casual on a day to day basis and the workman has no right to employment in the management Bank. The management Bank is a nationalized bank and therefore follows prescribed rules and procedures for appointment in its regular service. For appointment in the subordinate staff cadre, the recruitment is made through notification in the Employment Exchange and after complying with the formalities of test and interview. The workman was not given any appointment order and therefore there was no retrenchment of the workman by the management Bank. According to the learned Counsel for the workman, the policies and procedures relied on by the management are for the regular recruitment and the workman has no claim for regularization. With regard to the policies also the workman through WW2 established that the management Bank resorted to regularization of temporary and casual subordinate staff on the basis of settlement between the Union and the management. It is also pointed out that as per Exbt.W4 that there is a Bipartite Settlement between the management Bank and All India Bank of Baroda Employees Federation for absorption of casual/temporary peons/sweepers in 3 phases. As per Exbt.W3 it is pointed out that 37 temporary subordinate employees were appointed as permanent employees in Kerala branches from 2008 to 2011. The management relied on Exbt.M1 to point out that the HR policy covers the appointment of subordinate staff also. According to the learned Counsel for the management, General Manager(HRM) is the competent authority to sanction the

post of sub staff in various zones. However the learned Counsel for the workman pointed out that the specific guidelines and criteria for recruitment in subordinate staff cadre forms part of Exbt. M1 as Annexure 1, which is not enclosed along with Exbt.M1. Further it is also seen that at Para 7.0 of Exbt.M1 that there is a provision for engagement of sub staff on temporary basis. This provision authorized engagement of temporary sub staff for a limited period not exceeding 90 days by the branches in rural and semi urban centers. Such temporary engagement also requires the approval of General Manager(HRM). According to MW1, Perumbavoor branch of the management Bank was not having any regular Peon from the date of inauguration of the branch on 13.07.2009 till 07.01.2012. MW1 did not deny the fact that there was a sanctioned post of Peon when the Perumbavoor branch of the management Bank was opened on 13.07.2009. Further he admitted that the workman was being engaged as a Peon from 13.07.2009. MW1 also admitted that the workman was doing the work of a regular peon from the date of his appointment till MW1 left the branch on 09.10.2011. He further confirmed that no permanent peons were posted as long as he was working in the branch. It is admitted by MW1 & MW2 that the accounts of the Perumbavoor branch was being audited every year and the payment of wages to the workman was being done through Profit & Loss account/ Sundry charges through vouchers. The auditors never pointed out any irregularity in the wages paid to the workman and no action was also taken against the Manager who made such appointment and payments. Hence it is only probable that the engagement of the workman had the approval of the competent authority and the payments made to him were fully authorized.

10. The case of the workman herein is that he was working against the vacancy of a regular peon in the Perumbavoor branch of the management Bank from 13.07.2009 to 07.01.2012. To substantiate the above point, the workman called for Exbt.M6, Peon Delivery Book from 05.08.2009 to 16.12.2011 which will clearly indicate the nature of work handled by the workman during the relevant period. Exbt.M7 and M8 series of letters will show that the workman was entrusted with the responsibility of collecting gold coins for and on behalf of the Bank of Baroda, Perumbavoor branch. The workman also in his evidence stated that there was no other Peon available in the branch and he was handling all the work of the regular peon and he was having access to all areas of the branch including the security areas. Hence it is very clear that the management Bank was engaging the workman against the permanent vacancy of a peon and he was entrusted the responsibility of a regular peon. On an application by the workman the management produced

1. The true copy of statement of A/c no.328501500000100 maintained at Perumbavoor branch in respect of the workman from 29.07.2009 to 31.12.2012. This document is marked as Exbt.M2 in this proceedings.
2. True copy of Ledger account statement of Sundry charges A/c No. 32850054511004 of Perumbavoor branch from 13.07.2009 to 07.01.2012. This document is marked as Exbt.M3 in this proceedings.
3. True copy of available debit vouchers relating to wages paid to temporary employees from 13.07.2009 to 07.01.2012. These documents are marked as Exbt.M4 series.
4. True copy of the available debit vouchers relating to Bonus paid to the debit A/c no.32850052431001 for the period from 2009-2010, 2010-2011, 2011-2012. These documents are marked as Exbt.M5 series.

The management failed to produce Form-C Bonus paid statements for the year 2010-11 and 2011-12. According to them the said documents were not available with the Bank. The Form-C Bonus would clearly indicate the number of days the workman worked in the branch which is a clear proof to establish that the number of days the workman worked in the branch during each year when the bonus is paid. According to the learned Counsel for the workman, the Form-C Bonus paid statement under Payment of Bonus Act, 1965 is a very crucial document to establish the claim of the workman that he worked for more than 240 days in a year immediately prior to his retrenchment on 07.01.2012. Except for the statement that these crucial documents are not available with the branch, the management has not offered any explanation for non production of the same in the affidavit. The learned Counsel for the workman argued that adverse presumption will have to be drawn against the management for non production of these crucial documents. The learned Counsel relied on the decision of **Gauri Shankar Vs State of Rajasthan**, 2015 12 SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f. 01.01.1987 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and has received salary from the respondent department each month. The workman challenged the retrenchment as bad in law as the same is in violation of Sec 25F, 25G, 25H, 25T and 25U of the ID Act. The workman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs. Muhammed Haji Latheef**, AIR 1968 SC 1413 and **Murukesam Pillai Vs. Manikyavasaka**

Pandara, (1917) 5 LW 759 held that even if the burden of proof does lie on a party, the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. The learned Counsel for the workman also relied on the decision of the Hon'ble Supreme Court in **Sriram Industrial Enterprises Ltd Vs Mahak Singh and others**, 2007 4 SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession, it is the responsibility of the management to disprove the claim of the workman that he did not work for more than 240 days with the management one year immediately prior to his/her termination. In this particular case the Form-C Bonus paid statement is a crucial document in the custody of the management to substantiate the claim of the workman that he was working for more than 240 days in a year immediately before his retrenchment. Since the management failed to offer any satisfactory explanation for non production of the document, an adverse presumption can be drawn that the workman worked continuously for 240 days immediately prior to his retrenchment. Further from Exbt.M3, Ledger account statement of Sundry charges for the period from 13.07.2009 to 07.01.2012, it can be seen that the workman worked for 334 days for the period from 15.01.2011 to 07.01.2012 i.e., 1 year immediately prior to his retrenchment on 07.01.2012 and was paid a salary of Rs.95,874/- . The Exbt.M4 series of debit vouchers support the above evidence. Exbt.M5 series of debit vouchers for bonus paid would show that Rs.6300/- was paid to the workman in the year 2009-10, Rs. 8400/- in the year 2010-11 and Rs.4900/- in the year 2011-12. The workman through these documents proved that he worked for more than 240 days during one year immediately before his termination. Hence the management is liable to follow the conditions precedent contemplated under Sec 25F of the ID Act, 1947 before termination of his service.

11. The learned Counsel for the management argued that the workman in this case is only a casual employee on daily wages and hence he is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for the workman relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd**, 2019 (1) KHC 225 to point out that the definition in Sec 2(s) of the ID Act includes casual employees also. In the above case the Hon'ble High Court held that;

“ Para 18. From this it is quite evident that the definition of the term ‘workman’ U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra)(in the context governed by the provisions of the workman’s Compensation Act) is not at all attracted to the case in hand.”

12. The learned Counsel for the management relied on the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, 2006 4 SCC 1 and the **State of Bihar and others Vs Devendra Sharma**, Civil Appeal no. 7879/2019, to argue that the management Bank being a ‘state’ under Article 12 of the Constitution, no back door entry in service can be allowed violating Article 14 & 16 of the Constitution of India. The learned Counsel for the workman on the other hand relied on various decisions and argued that when there is a violation of the provisions of ID Act, the dictum laid down in the above decisions is clearly distinguishable. In **Ajaypal Singh Vs Haryana Warehousing Corporation**,(2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision in **Uma Devi's case** (Supra) and held that ;

“17. In Uma Devi's case, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The provisions of the Industrial Disputes Act and powers of the Industrial and Labour Court provided therein were not at all under consideration in **Uma Devi's case** (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's case**.

18. We have noticed that Industrial Disputes Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.

19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the

appropriate Govt or such Authority as may be specified by appropriate Govt by notification in the official Gazette. If any part of the provisions of Sec 25F is violated and the employer there by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

(20) -----

(21) -----

Para 22. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Article 14 & 16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year”.

The above decisions was also quoted with approval by the Hon'ble Supreme Court in **Durgapur Casual Workers Union and others Vs Food Corporation of India and others**, (2015) 5 Supreme Court Cases 786. The Hon'ble Court held that an undertaking of the Government which comes within the meaning of ‘industry’ or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 & 16 of Constitution of India and the private industries are not guided by 14 & 16 of the Constitution. In **Umrala Grama Panchayat Vs Secretary, Municipal Employees Union**, 2015 12 SCC 775 the Hon'ble Supreme Court directed that the services of the workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

13. In view of the above, it is very clear that the management terminated the service of the worker in clear violation of the provisions of Sec 25F of the Industrial Disputes Act.

14. The workman also pleaded that he was terminated from the service of the management in violation of Sec 25G of the ID Act, on the ground that the employees much junior in service to him were retained in service when he was terminated from the service of the establishment. The workman did not lead any evidence to substantiate and support violation of Sec 25G of the ID Act. The workman also alleged that the management appointed fresh hands against the post held by him for doing the same job which he was doing. Having retrenched him from service of the management the workman has a right to be offered re-employment against any future vacancy in preference over others. Since the management failed to implement the mandate of Sec 25H, they violated the provisions of Sec 25H of ID Act. There is no evidence to support the case of the workman that another person was appointed in his place without offering him a re-employment there by violating the provisions of Sec 25H of the ID Act. The workman also claimed that the management violated Sec 25T of the ID Act by resorting to the unfair labour practice of employing the workman as a casual worker and continued his service for years together with the object of depriving him the status and privilege of a permanent workman. As per Sec 2(r)(a), “unfair labour practice” means any practice specified in the 5th Schedule of the Act. In the 5th Schedule I (x) “the action of the management to employ workman as badali's, casuals or temporary and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workman, is classified as an unfair labour practice, on the side of the management”. In this particular case, it is seen that the workman was appointed as a temporary peon on 13.07.2009 and he was continued till 07.01.2012. Hence it is very clear that there was a post of Peon against which the workman was appointed on casual basis and he continued his service with Bank for almost 2½ years drawing daily wages. It is a fact that he is denied the facility of a regular peon when his services were terminated by the management Bank. This is a clear case of unfair labour practice.

15. Considering all the above facts, pleadings and evidence in this case, I am inclined to hold that the termination of the workman from the services of the management Bank is ab initio void and is in violation of Sec 25F of ID Act, 1947 and retaining him as a daily wage employee for almost 2 ½ years and denying him the benefits of regular employees is an unfair labour practice in violation of Sec 25T of ID Act.

16. Issue No. 3

Issue No.2 regarding the legality of termination of the workman was decided in favour of the workman and against the management. The learned Counsel for the workman argued that once this Tribunal found that the termination of the workman was illegal, he is entitled for reinstatement in service with full back wages. The learned Counsel for the management argued that in the special circumstances of this case, it may not be ideal to order reinstatement with full back wages and he argued that it is ideal to provide monetary

compensation in the place of reinstatement. Relying on the decision of **State of Uttarakhand and others Vs Rajkumar**, 2019 1 LLJ 513 SC the learned Counsel for the management argued that the workman was a daily wages employee and he continued as a daily wage employee and is not entitled for regularization considering the spirit of the decision of Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, (Supra). The Hon'ble Supreme Court in the above referred case relying on the decision of **BSNL Vs Bhurumal**, (2014) 7 SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia** 2018 12 SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in **BSNL case** (Supra) as follows;

“Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, or unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Para 34. The reasons for denying the relief for reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non payment of retrenchment compensation and notice pay as mandatorily required U/s 25F of the ID Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated he has no right to seek regularization [see **State of Karnataka Vs Uma Devi**(3)]. Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

Para 35. We would however, like to add a cavate here. There may be cases where termination of daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principles of last come first go viz. While retrenching such a worker daily wage junior to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such relief can be denied.”

The learned Counsel for the workman on the other hand relied on the decision of the Hon'ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the workman is entitled for reinstatement with full back wages since the order of termination was void ab initio. The Hon'ble Supreme Court in the above case relied on the following observation of the Court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya**, 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

“Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other acquaintances to avoid starvation. These sufferings

continued till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments”.

In the above case, the Hon'ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for more than 240 days.

In the present case, it is true that the workman was engaged as a daily wage employee and he worked continuously for more than 240 days for one year before his termination and it is also found that his continued employment for prolonged time as a daily wage worker was an unfair labour practice U/s 25T, as he was engaged as a casual employee for years together with the object of depriving him off the status and privilege of permanent workman. The management failed to establish that the workman was gainfully engaged during the period of termination. Hence it is not a simple case where the procedure contemplated U/s 25F of ID Act is violated.

Considering all the facts, evidence and pleadings, I am inclined to hold that the workman is entitled for reinstatement in the service of the management Bank with full back wages, continuity of service and other consequential benefits.

Hence an award is passed holding that the termination of the workman from the services of the management Bank from 07.01.2012 is illegal, unjust and ab initio void. He is entitled to be reinstated in service of the Management Bank with full back wages, continuity of service and all other attended benefits.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 24th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

- WW1 - Shri.Dinesh Kumar B., dt.18.01.2016
- WW2 - Shri.V.N.Krishnan , dt.10.05.2016

Witness for the Management:-

- MW1 - Shri.KrishnaKumar , dt.05.12.2016
- MW2 - Shri.ZiyadRahuman M dt.30.04.2019

Exhibits for the Workman:-

- W1 - Letter dt.20.03.2012 submitted by workman to the Asst. Labour Commissioner (C), Ernakulam
- W2 - Copy of the Report Failure of Conciliation proceedings dt.16.10.2012 of the Asst.Labour Commissioner(C), Ernakulam
- W3 - True copy of letter dt.04.03.2013 issued by the Dy.General Manager, Bank of Baroda, Zonal Office, Chennai under RTI Act.
- W4 - True copy of Tripartite Settlement dt.18.03.2008 between Bank of Baroda and All India Bank of Baroda Employees' Federation

W5 - True copy of Settlement dt.25.11.2013 between the management of Union Bank of India and the All India Bank of Union Bank of India Employees' Association

W6 - True copy of Memorandum of Settlement dt.25.06.2013 between the management of Bank of India and Federation of Bank of India Staff Unions

W7 - True copy of letter dt.09.04.2013 of Asst.General Manager, State Bank of Travancore, Head Office, Trivandrum enclosing a Memorandum of Settlement dt.21.10.2011 between the management of SBT and SBT Employees Union

W8 - True copy of Memorandum of Settlement dt.30.08.2014 between the management of Canara Bank and Canara Bank Employees Union

W9 - True copy of DBOD.CORIA No.15968/04.03.001.2013/13 dt.09.05.2013 issued by Reserve Bank of India

W10 - True copy of letter dt.27.02.2013 issued by the Dy. Manager, Bank of Baroda, Corporate Center, Bombay

Exhibits for the Management:-

M1 - True copy of the HR Resourcing Policy of the management Bank

M2 - True copy of the statement of account No.32850100000100 maintained at Perumbavoor branch from 29.07.2009 to 31.12.2012

M3 - True copy of the Ledger account statement of Sundry charges account No.32850054511004 of Perumbavoor branch from 13.07.2009 to 07.01.2012

M4 - True copy of the available Debit vouchers relating to wages paid series to temporary employees from 13.07.2009 to 07.01.2012

M5 - True copy of available Debit vouchers relating to Bonus paid to series the debit account No.32850052431001 for the period 2009-2010 to 2010-2011 and 2011-2012

M6 - True copy of the Peon delivery book of Perumbavoor branch for the series period 13.07.2009 to 16.12.2011

M7 - True copy of the letter dt.11.08.2010 of Perumbavoor branch addressed to Ernakulam branch requesting gold coins

M8 - True copy of the letter dt.06.05.2011 of Perumbavoor branch series addressed to Ernakulam branch requesting gold coins.

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 913.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 01/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, COCHIN as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank, and their workmen, received by the Central Government on 05.10.2020.

[No. L-39025/01/2020-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Wednesday the 5th day of February 2020, 16 Magha 1941)

ID No. 01/2017

Workman : Sri.S. Chandra Babu
 Revathy, ENRA-C41/1
 Elakathu Nagar
 Valiyavila, Thirumala P.O.
 Trivandrum – 695006
 By Adv. A. Jayasankar

Management : The General Manager
 Syndicate Bank
 Manipal
 Karnataka – 576014
 By Adv. R.S. Kalkura

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 05.02.2020 passed the following:

AWARD

1. This is a dispute raised U/s 2A(2) of Industrial Dispute Act, 1947.
2. According to the workman, he joined the service of the management Bank on 28.11.1978 as Attender. He was promoted as Clerk w.e.f 30.06.1984. He served the Bank for 36 years. While working as Clerk in the Killipalam branch of the management Bank, the workman was placed under suspension pending enquiry vide order dt.02.05.2013. A formal charge sheet was issued on 27.11.2013. In the charge sheet it was alleged that a customer orally complained to the Branch Manager that she remitted an amount of Rs.11,500/- to her jewel loan account on 13.03.2013 and the said amount was not credited to her account. It was also alleged that another customer gave a written complaint to the Branch Manager on 17.04.2013 stating that she remitted Rs.20,000/- in her gold loan account on 13.02.2013 and the said amount was not credited to her account. The management therefore alleged the misconduct of doing acts prejudicial to the interest of Bank against the workman. The workman in his reply dt.17.12.2013 admitted the misconduct and explained the circumstances leading to the adjustments in the account. The management was not satisfied with the reply and initiated departmental enquiry against the workman. The workman participated in the enquiry and admitted guilt before the Enquiry Officer. The Enquiry Officer submitted his report on 09.05.2014. The workman submitted his reply on 29.05.2014 again pleading for mercy. A show cause notice was issued to him on 26.07.2014 proposing punishment of dismissal from the service of the Bank. He was also afforded a personal hearing on 13.08.2014. The workman participated in the personal hearing, admitted the guilt and pleaded for mercy. The Disciplinary Authority vide order dt.25.09.2014 imposed a punishment of dismissal on the workman. The workman submitted an appeal on 02.11.2014 before the Appellate Authority. During the pendency of the appeal, he attained the age of superannuation on 30.11.2015. The Appellate Authority also afforded a personal hearing on 04.06.2015. The appeal was dismissed by the Appellate Authority vide order dt.19.02.2016 and the same was communicated to the workman on 29.04.2016. The Disciplinary Authority as well as the Appellate Authority did not consider the fact that the workman admitted his guilt and pleaded for mercy from the very beginning. His meritorious service for 36 years was not considered while proposing an order for punishment. The circumstances that lead to the adjustments in accounts were not considered by the management and the Enquiry Officer. It is cardinal principle of Industrial Law that justice should be tempered with mercy so that the erring workman can be given an opportunity to reform himself.
3. The management denied the allegations in the claim statement. The management held a full-fledged domestic enquiry against the workman. A proper enquiry in tune with the provisions of Bipartite Settlement (Memorandum of Settlement) dt.10.04.2002 and the Domestic Enquiry Rules framed by the Bank applicable to its employees and was conducted in compliance with the principles of natural justice, equity and good conscience. The workman was provided with adequate opportunity to adduce evidence. There is no violation of principles of natural justice.

4. The workman while working as Clerk at Killipalam was placed under suspension for serious allegation of misappropriation of Rs.11,500/- from Smt.Dharmaja Kumari and Rs. 20,000/- from Smt.Balamani Mohan remitted towards their jewel loan accounts. On 18.03.2013, Smt.Dharmaja Kumari orally complained to the Branch Manager that she remitted an amount of Rs.11,500/- in her jewel loan account on 13.03.2013 and the amount was not seen credited to her jewel loan account. She produced the xerox copy of the counter foil issued by the workman bearing his signature. Since the workman was the Cashier in the branch on 13.03.2013 the Branch Manager vide letter dt.18.03.2013 called upon the workman to remit the amount immediately and also calling for his explanation. Though the workman was on leave from 18.03.2013 to 21.03.2013, he remitted the amount of Rs.11,500/- on 20.03.2013 to the SB account of Smt.Dharmaja Kumari, since the jewel loan account was already closed on 18.03.2013. On verification of branch records, it was observed that no cash was credited on 13.03.2013 against the jewel loan account of Smt.Dharmaja Kumari. There was no excess cash reported on 13.03.2013. Hence it is very clear that the workman misappropriated an amount of Rs.11,500/- remitted by Smt.Dharmaja Kumari. Another customer Smt.Balamani Mohan complained to the Branch Manager on 17.04.2013 in writing that she had remitted an amount of Rs.20,000/- to her jewel loan account on 13.02.2013 and that the said amount was not credited to her jewel loan account. Since the workman was the Cashier in the branch on 13.02.2013, the Branch Manager called for his explanation vide letter dt.17.04.2013. Since the workman was absent from 17.04.2013 to 20.04.2013 the letter was posted to his residence and was received by his wife and subsequently when the workman joined duty on 22.04.2013, the workman received the letter in person. The workman's wife remitted the amount of Rs.20,000/- to the jewel loan account of Smt.Balamani Mohan on 18.02.2013. Hence a charge sheet no.CGS/ROT/01/2013 dt.27.11.2013 was issued to the workman charging gross misconduct of doing acts prejudicial to the interest of the Bank. In his reply dt.17.12.2013 the workman admitted the guilt. Considering the nature of gravity of misconduct, the Disciplinary Authority ordered a departmental enquiry against the workman. The Enquiry Officer after conducting a fair and proper enquiry, submitted his findings vide his report dt.09.05.2014. A copy of enquiry report was sent to the workman. In his reply he reiterated his earlier position and admitted the guilt. The Disciplinary Authority offered the workman a personal hearing on 13.08.2014, awarded a punishment of dismissal from service of the Bank with immediate effect. The Appellate Authority also confirmed the punishment vide its proceedings dt.19.02.2016. The Enquiry Officer conducted the proceedings in a fair and proper manner following the principles of natural justice. The misconduct committed by the workman and admitted by him and otherwise proved in the domestic enquiry are of very grave and serious nature. Management is a financial institution dealing with public money. A Bank employee has to observe high degree of honesty and integrity as he holds a position of trust and confidence where honesty and integrity are built into the functioning of a financial institution such as the management Bank. If a Bank employee indulges in doing unauthorized acts as the one committed by the workman, the public conscience would be shocked and the image of the Bank will be tarnished. Hence the punishment awarded to the workman is not at all disproportionate to the misconduct proved against him. The question of leniency can be examined only when there is bona fide intentions on the part of the employee which lead to certain irregularities. In the instant case, the misconduct committed by the workman is with malafide intention and does not qualify for any interference.

5. The workman did not file any rejoinder.

6. On completion of pleadings, the documents produced by the management were marked by consent as Exbt.M1 to M9. The management did not produce the enquiry file. However they produced a copy of the enquiry report and some of the documents as part of management evidence.

7. The following issues were framed to be adjudicated.

- a. Whether the enquiry is conducted in a fair and proper manner following the principles of natural justice?
- b. Whether the findings of the Enquiry Officer were based on proper and legal evidence ?
- c. Whether the punishment awarded is proportionate to the charges proved against the workman ?
- d. Relief, if any

8. Issue No.1

The management neither produced the enquiry file nor the documents relied on by the Enquiry Officer, in this industrial dispute. A copy of the enquiry report is produced as Exbt. M7. From the enquiry report, it is seen that 30 documents were marked in the enquiry on the management side and 2 documents on the side of the workman. The management examined MW1 and marked documents through him in the enquiry. Majority of the documents relied on by the Enquiry Officer is not available in these proceedings. In the normal course, it is a fit case to setaside the enquiry report as the documents relied on by the Enquiry Officer nor the proceedings of

enquiry are available for this Tribunal to evaluate whether the enquiry is conducted in a fair and proper manner. However it is seen that the workman admitted the misconduct from the very beginning when the charge memo was issued to him. Further he admitted his misconduct during the course of enquiry also. The learned Counsel for the workman fairly conceded that he is not challenging the fairness of the enquiry since the workman has admitted the misconduct at every stage of proceedings. Since there is no serious challenge on the issue of fairness and legality of the enquiry, the issue is decided in favour of the management and against the workman.

9. Issue No. 2 & 3

The charge against the workman is that he misappropriated an amount of Rs.11,500/- from Smt.Dharmaja Kumari and Rs.20,000/- from Smt.Balamani Mohan remitted by them towards their jewel loans. Smt.Dharmaja Kumari orally complained to the Branch Manager that she remitted an amount of Rs.11,500/- to her jewel loan account on 13.03.2013. She also produced a photocopy of the counter foil issued by the workman with his signature. Since the workman was the Cashier on 13.03.2013 the workman was directed to explain the anomaly and remit the amount immediately to the jewel loan account of the customer. The workman remitted the amount on 20.03.2013 to the SB account of Smt.Dharmaja Kumari since the jewel loan account was already closed by her on 18.03.2013. On verification of the Bank records, it was observed that no cash was remitted to the jewel loan account of Smt.Dharmaja Kumari on 13.03.2013 and the credit slip was not available in the slip bundle. No excess cash was also reported on 13.03.2013. Immediately on receipt of the letter from Bank, the workman repaid the amount to the account of Smt.Dharmaja Kumari on 20.03.2013.

10. Another customer Smt.Balamani Mohan also complained that an amount of Rs.20,000/- deposited in her jewel loan account on 13.02.2013 was not credited to her account. Necessary entries were made in the jewel loan token issued to her. The management called for explanation vide letter dt.17.04.2013 and Smt.Nileena Sankar wife of the workman came to the branch on 18.04.2013 and deposited an amount of Rs.20,000/- in the jewel loan account of Smt.Balamani Mohan on 18.04.2013.

11. The management issued a charge sheet no.CGS/ROT/01/2013 dt.27.11.2013 to the workman for acts of gross misconduct of “doing acts prejudicial to the interest of bank”. The workman vide his letter dt.17.12.2013, Exbt.M6 admitted his guilt. In Exbt.M6 the workman stated as follows;

- “1. It is true that on the relevant dates mentioned in the charge sheet an amount of Rs.20,000/- and 11,500/- were remitted by the clients concerned in to the Bank. I had issued counter foils for the receipts in my capacity as cashier of the Bank.
- 2. However on account of circumstances beyond my control I did not credit the amount concerned to the Bank and there by committed a lapse which I had regretted.
- 3. The circumstances under which I committed the acts have been very elaborately explained in my letter dt.24.07.2013 address to the Vigilance Officer of the Bank. I request you to the said latter dt.24.07.2013 as part and parcel of my reply to the charge sheet.”

Along with the above explanation a copy of the latter dt.24.07.2013 given by the workman to the Vigilance Officer, Syndicate Bank was also enclosed. In the above letter also the workman admitted having committed the misappropriation. According to him, he was constructing a house, in the name of his wife and due to financial difficulties the contractor was harassing him and for getting over the immediate difficulty he did the misappropriation. He was anticipating some amount from KSFE and he was planning to deposit the money immediately on receipt of the same. Since there was some delay in getting the money from KSFE he was forced to commit the above adjustment. Further from the enquiry report it is seen that the Enquiry Officer read the charges against the workman during the course of enquiry and asked whether he admits the charges. The workman admitted the charges and he only explained the circumstances under which he was forced to do the financial irregularities.

12. From the above evidence, there is no dispute regarding the fact that the workman committed the gross misconduct of misappropriation of customer’s money. The learned Counsel for the workman argued that the workman never disputed the allegations in the charge memo and only pleaded for mercy before issuing the charge sheet, after issuing the charge sheet during the course of enquiry and also before the Disciplinary Authority and appellate authority. In view of the above the learned Counsel for the workman argued that the capital punishment imposed on the workman is disproportionate to the charges proved against him, particularly because he admitted to the adjustment of money and explained the circumstances which forced him to do it and also refunded the money to the customers immediately when the matter was pointed out to him. According to the learned Counsel for the management, the management conducted a preliminary investigation before framing of charges against the workman. Fair and reasonable opportunities were given to the workman to explain his defence. The enquiry was conducted following the principles of natural justice. The findings of enquiry are

totally based on evidence adduced during the course of enquiry. The Disciplinary Authority has considered all the facts, circumstances and evidence in the enquiry along with the findings of the Enquiry Officer before proposing punishment to the workman. The Disciplinary Authority as well as the Appellate Authority gave him adequate opportunity for personal hearing before the punishment is confirmed. The management is a financial institution dealing with public money. A Bank employee has to observe high degrees of honesty and integrity as he holds a position of trust and confidence. Hence the punishment awarded by the Disciplinary Authority and confirmed by the Appellate Authority is proportionate to the charges proved against him.

13. The Hon'ble Supreme Court considered the impact of misappropriation of money by a Bank employee in various decisions. In **State Bank of India and others Vs S. N.Goyal**, 2008 8 SCC 92 the Hon'ble Supreme Court held at Para 41 of its judgment that;

“The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation even temporarily, of the funds of the Bank or its customers/borrowers constitute a serious misconduct inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is viewed lightly or leniently, it will encourage other bank employees to indulge in such activities thereby undermining the entire Banking system. The request for reducing the punishment is misconceive and rejected”.

In **State Bank of India and another Vs Bela Bagchi and others**, 2005 7 SCC 435 the Hon'ble Supreme Court held that every officer/employee of the Bank is required to take all possible steps to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. In **Disciplinary Authority-cum-Regional Manager, Central Bank Vs Nikunja Bihari Patnaik**, 1996 9 SC 69 the Hon'ble Supreme Court held in similar circumstances that it is nor defence that there was no loss or profit which resulted in the case when an employee acted without authority. Considering the dictums laid down by the Hon'ble Supreme Court in above referred cases, it is not appropriate to interfere with the punishment imposed by the Disciplinary Authority on the workman.

Hence I am inclined to hold that the findings of the Enquiry Officer are based on legal evidence and the punishment imposed on the workman is proportionate to the charges proved against him.

14. Issue No. 4

In view of the findings on issue nos. 2 & 3, the workman is not entitled for any relief claimed by him.

In view of the above, an Award is passed holding that the enquiry is conducted in a fair and proper manner, the findings of the Enquiry Officer is based on legal evidence, the punishment awarded is proportionate to the charges proved against the workman and the workman is not entitled for any relief claimed by him.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 5th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Exhibits for Management:-

- M1 - True copy of suspension order dt.02.05.2013
- M2 - True copy of the letter dt.18.03.2013 issued by Management to workman
- M3 - True copy of the complaint dt.17.04.2013 submitted by Smt.Balamani Mohan
- M4 - True copy of the letter dt.17.04.2013 issued by the Management to the workman
- M5 - True copy of the charge sheet dt.27.11.2013 issued to the workman
- M6 - True copy of reply dt.17.12.2013 issued by the workman admitting guilt
- M7 - True copy of enquiry report dt.09.05.2014 holding that the charges levelled against the workman as proved.
- M8 - True copy of dismissal order dt.25.09.2014 issued to the workman
- M9 - True copy of the proceedings No.20/PD:IRD(W)/DA-7 dt.19.02.2016

नई दिल्ली, 5 अक्टूबर, 2020

का. आ. 914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू मंगलोर पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 19/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हआ था।

[सं. एल-45011 / 1 / 2006-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of New Mangalore Port Trust and their workmen, received by the Central Government on 05.10.2020.

[No. L-45011/1/2006-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 07TH SEPTEMBER 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 19/2006

I Party

The General Secretary,
New Mangalore Port & Dock,
Workers' Union,
Market Building,
Panambur,
Mangalore - 575010

II Party

The Chairman,
New Mangalore Port Trust,
Panambur,
Mangalore - 575010

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-45011/1/2006-IR(B-II) dated 17.05.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act') referred the following Industrial Dispute for adjudication.

"Whether the demand made by the New Mangalore Port & Dock Workers' Union for regularisation of service of workers engaged for the management of New Mangalore Port Trust for the work of sweeping, cleaning and gardening is justified? If so, what relief are the 21 workers mentioned in the Annexure to the Representation dated 29.06.2005 entitled to?"

1. The claim of the 1st Party is,

that the 2nd Party is a Major Port Trust established under the Major Port Trust Act. It is a Central Government Undertaking. It has employed permanent workmen, whose wage and service conditions are determined by the periodical settlement. The 1st Party Workmen are engaged as Safaiwalas (Sweepers) and Mali-cum-Majdoors for the work of cleaning the Offices, Hospitals and Roads of the premises of the 2nd Party. The Safaiwalas attend the work of sweeping, cleaning and dusting of all the aforesaid buildings and toilets attached to it maintained by the 2nd Party in respect of its main activities. To carry on other works, they have Inspection

Building, Recreation Park, Guest House, Garage, Workshop, Pump House, Generator Room, Canteen Staff Quarters and Wharf Non-Residential Buildings etc. along with the parks and gardens maintained in the premises. The 1st Party Workmen work for 8 hours or more for a day but are paid meagre wages which comes to around Rs. 2,300/- per month. They are working for the last 15 years continuously. They are paid daily wages and the work done by them is perennial in nature. The permanent Safaiwalas and workers are paid to the extent of Rs 8000/- per month with all the social security and welfare benefits. But, the 1st Party Workmen except for the meagre pay of Rs. 2300/- per month are deprived of other social security benefits. The 1st Party approached the Hon'ble High Court of Karnataka in WP No. 11045/1998 seeking direction to the Central Government to prohibit the contract labours in respect of cleaning and gardening in the 2nd Party / Establishment. The Writ Petition was disposed of on 21.09.2002 with a direction to the 1st Party to approach the industrial tribunal for appropriate relief. The 1st Party are entitled for absorption; the 2nd Party has not registered itself as principle employer under the provisions of Contract Labours (Regulation and Abolition) Act, 1970 to engage the contract labour. There is no contractor with valid license to employ and provide labour to the 2nd Party in the work of sweeping and gardening. Hence, there is no labourer labour contract in the eye of law. The 1st Party discharged the duties under the direct control and supervision of the Officers of the 2nd Party. They are paid wages by the 2nd Party. Hence, they are the direct employees of the 2nd Party.

2. The claim is contested as per the grounds below,

that they have not engaged any worker directly for the work of sweeping, cleaning and gardening. The work specified in the claim statement is carried out by the contractor by engaging his casual workers. There is no employer employee relationship between the 2nd Party and the Workmen working under the contractor. The works are given on contract basis by inviting tender and contract is awarded to the contractor who quotes lowest rates. They have their own permanent workmen as stated in the claim statement; the members of the 1st Party are additional persons who are engaged through the contract workers. The contract workers are awarded yearly by calling a fresh quotation. The contractors are engaging local labours available for the part time cleaning of the premises and public places of the Port Trust whenever required. So far, there is no complaint against the contractor by anyone pertaining to exploitation in respect of non-payment of minimum wages, time of work or any other violation of rule.

It is further stated by 2nd Party that they have not engaged any workers on Safaiwalas (Sweeper), Mali-cum-Majdoor for the work of cleaning Offices, Hospital, Roads etc. directly. Whenever there is some temporary / part time work of cleaning, dusting, sweeping etc, these works are entrusted to the contractor under the provisions of Contract Labour (Regulation and Abolition) Act, 1970. The wages and other benefits of the said workers are paid by the contractor directly but not by 2nd Party Port Trust. The labour regulation applicable to the contract labour is strictly adhered. The labourers engaged by the contractors are of migratory in nature, every now and then they change the contractors and do not continue for a long period under any of the contractor. For the post of perennial work, regular and skilled employees are engaged. They have engaged labourers / Maali-cum-Majdoor directly for the work of development and maintenance of garden, parks etc. Since such work requires sufficient knowledge of Soil testing, plantation and horticulture knowledge.

It is further stated that the dispute raised by the 1st Party before the Conciliation Officer failed, failure report was submitted to the Ministry of Labour, Government of India, New Delhi. Because of the permission granted by the Hon'ble High Court directing the 1st Party to approach the Tribunal, the present dispute is filed before this Tribunal.

3. The claim for absorption of the workmen in the Port Trust is baseless, unreasonable and untenable. The wages are disbursed to the workmen by the contractor or his nominee directly to the workers and the 2nd Party deputes its representative to be present in token of having disbursed the salary in its presence by the contractor. The 2nd Party is neither supervisor nor controlling authority for the 1st Party Workmen. Discipline of the workers is regulated by the contractor and not by the principle employer. The contract entrusted to the contractor does not specify the number of the person required to be engaged but it quantifies work only. The leave / absence etc of the workers is followed by the contractor only, not by the 2nd Party. No advances of any nature is paid by the 2nd Party to the 1st Party Workmen. It is only the contractor who regulates the same. It is the responsibility of the contractor to maintain the record pertaining to the workers / contract workers. The work entrusted to the contractor or engaging contract labour is neither a sham contract nor a camouflage. The work undertaken by the contractor is not statutory employment under the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Engaging contract labours in the 2nd Party is not a sham arrangement or camouflage. Based on the actual requirement for temporary nature of work, works are awarded to the licensed contractor after inviting competitive tenders every year. It is not possible for the 2nd Party to absorb all the temporary labourers engaged by the contractors.

4. Both parties adduced evidences. On behalf of the 1st Party, out of five witnesses examined, four of them were the concerned workmen and the first witness was the General Secretary of the Union - 24 documents were marked as Ex W-1 to Ex W-24. Rebuttal evidence is adduced by the Executive Engineer, Civil of the 2nd Party and Ex M-1 is marked.

Both learned Advocates submitted their respective written argument and also their oral argument.

5. During the pendency of the proceedings, the workmen at Serial No. 19 and 21, namely, Sh. A. Ramesh Kumar and Sh. Manjunath M are said to have been removed from service and an application was filed seeking restoration of their service. The application is pending.

Learned Counsel for the 1st Party filed a memo on 10.12.2019 that the Union is not pressing the claim in respect of six of the 1st Party Workmen at Serial No. 1, 7, 12, 15, 17 and 20. Thus, the reference order confines to 15 workmen only, however out of them 2 are terminated.

6. The affidavit evidence of the WW-1 is mere reiteration of claim of the 1st party. Relevant documentary evidence in support of the claim are the Photostat copies of Muster Roll (Ex W-5 and Ex W-15) for the months of June 2009, December 2009, March 2010, April 2010, January 2011, September 2011, October 2011 and March 2013, the payslips pertaining to the concerned workmen, their Employees' State Insurance Card and Provident Fund Declaration / Provident Fund Contribution.

During the cross examination, WW-1 admitted that the Safai Karamcharis are not given appointment letter by the 2nd Party; Ex W-5 does not bear the seal of the verifying Authority. At Exhibit W-15 / Muster Roll for December 2009, Serial No. 12 name Manju is seen but no such 1st Party Workman is to be found in the list of concerned workmen annexed to the order of reference. The name of the workman at Serial No. 21 of the list of Mali-cum-Majdoor is Manjunatha M. Further, the witness admitted that he has no document to establish that Manju and Manjunatha M are one and the same person. He admits that the workmen are paid by different contractors; the Employees' State Insurance cards and the Provident Fund contributions document are not under the code number of NMPT. All other WWS admitted during their cross-examination that they are not issued appointment order by the 2nd Party. None of them are in possession of any document to establish that they are paid by the 2nd Party.

7. During the rebuttal evidence, MW-1 / Executive Engineer (Civil) had averred in his affidavit evidence that 2nd Party has a recruitment policy for appointment which involves identification of vacant post, finding suitable candidates from Employment Exchange, Interview and Selection. He gave the list of 10 permanent employees who were already working in the post of Safaiwala to demonstrate that the question of regularisation of the person annexed to the referenced order is not possible. During the cross examination, he admitted that the Safaiwalas mentioned in the list produced by him as MW-1 are working as Peons and Attendants subsequent to 29.06.2005, from then onwards there are no permanent regular Safaiwalas.

8. From the perusal of documents produced by the 1st Party, the Muster Roll (Ex W-5 and W-15) are not continuous. W-15 pertains to December 2009 and March 2010 reflecting the names of 17 employees. Ex W-5 is the Photostat copy of the Muster Roll. During the period 2010 and 2011, the number of employees was 11/10 only as per the above Muster Rolls. Ex W-5 probably bears the signature of Junior Engineer as token of endorsement of the disbursal of wage to the employees. Mere signature of the representative of the 2nd Party on the Muster Roll documents go to prove that the 2nd Party is the immediate owner of the workmen.

The case of the 2nd Party that one of its Officers used to be present when the wages were disbursed to the 1st Party Workmen coincides with the signature of Junior Engineer on the Muster Rolls. There is nothing to presume from W-5 or W-15 that the attendance register was maintained by the 2nd Party. It appears that W-5 is inspected by Inspector of the Employees' State Insurance Department. One of the workmen Smt. Vimala / WW-4 admits that she is paid by the contractor Purshotham. It is not shown that EPF and ESI contribution is made in the code number allotted to the 2nd Party. Ex W-17 to Ex W-22 are the Identity Cards issued by the ESI Corporation and registration details of the employees concerned. The name of the employer shown in this document is not that of the 2nd Party but of a third person. The claim is not raised in respect of the contractor but directly against the principle employer i.e. 2nd Party NMPT.

9. The 1st Party had claimed in the claim petition filed before the Tribunal on 08.05.2007 that the 1st Party Workmen are working for last 13-15 years continuously as Safaiwalas and Mali-cum-Majdoors. As per the Annexure to the Reference order, they are said to be working from February 1990 onwards. But there is not

even a bit of documentary proof in respect of their continuous service ever since 1990s. The reference was made to this office on 17.05.2006. All the Exhibits marked are of subsequent origin. Had if they come to the court with some tangible evidence in respect of continuous service rendered by them in the premises of the 2nd Party prior to the date of raising the dispute, there would have been some room for this Tribunal to probe further as to who is the immediate employer of the 1st Party, whether it is the 2nd Party or the contractor? Unfortunately, for the 1st Party, they have collected documents during the pendency of the proceedings. They appear to encash up on the fact that there is no contractor with valid license and the 2nd party has not registered itself as the principle employer under Contract Labour (Regulation and Abolition) Act, 1970. The 2nd Party having been established under the Major Port Trust Act, is an instrument of the State under Article 12 of the Constitution of India. They have not admitted the identity of the 1st Party Workmen. Though, they have not produced the Photostat copies of the contract entered into with the contractor, still the burden was on the 1st Party to explain the discrepancy about their own documents i.e. Provident Fund and ESI contribution is made by a 3rd person in his Code Number but not by the 2nd Party. There is variance in the number of employees; as per the order of the reference the number of employee is 21. As per the Ex W-5, during 2005 it was 11 and again during 2009 it was 17.

The judgments referred by the 1st Party are,

AIR-1978-1410-(SC) Hussainbhai V/s The Alath Factory Tezhilali Union and Others; 1999-I-LLJ-1086-(SC) Secretary Haryana State Electricity Board V/s Suresh and Others; 2008-II-LLJ-1071-(SC) G.M. ONGC., Shilchar V/s ONGC Contractual Workers Union; 2011-IV-LLJ-292-(SC) Bhilwara Dugdh Utpadak Sahakari S.Ltd. V/s Vinod Kumar Sharma-dead-by LRs and Others; FLR-2015-(144)-597-(SC) Durgapur Casual Workers Union and Others V/s Food Corporation of India and Others; 2015-(145)-FLR-688-(SC) Umrala Gram Panchayat V/s Secretary, Municipal Employees Union and Others; 2008-I-LLJ-452-(Orissa High Court) Paradeep Port Trust V/s General Secretary, Utkal Port and Dock Workers Union, Paradeep Port and Others, dwell upon the proposition of law that if the contractor is a mere name lender it is always open to the Tribunal to lift the veil to understand the true nature of the transaction between the principle employer and the workmen. The benefit of these judgments could have been beneficially applied to the case on hand if the claim averment was proved. Unfortunately, the employee employer relationship of the 1st Party Workmen with the 2nd Party is not established satisfactorily, that being so, there is no question of regularisation of their service by the 2nd Party.

AWARD

The reference is rejected.

(Dictated to LDC, transcribed by him, corrected and signed by me on 07th September, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 5 अक्तूबर, 2020

का. आ. 915.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिङ्किएट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पचाट (संदर्भ सं. 25/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हुआ था।

[सं. एल-12011/11/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकार

New Delhi, the 5th October, 2020

S. O. 915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, COCHIN as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank, and their workmen, received by the Central Government on 05.10.2020.

[No. L-12011/11/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Tuesday the 4th day of February 2020, 15 Magha 1941)

ID No. 25/2014

Workman/Union : The Assistant Secretary
 Syndicate Bank Staff Association
 Elamakkara
 Ernakulam – 682026
 By Adv. K. Shri Hari Rao

Management : The Regional Manager
 Syndicate Bank
 Ernakulam –682
 By Adv. M.P. Ashok Kumar

This case coming up for final hearing on 13.12.2019 and this Tribunal-cum-Labour Court on 04.02.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/11/2014-IR(B-II) dated 02.04.2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the management of Syndicate Bank in not regularizing the service and in not paying legitimate salary to Shri K.S.Premachandran, attender/sub staff in the stationary pool of Syndicate Bank is justified? What relief the concerned workman/union is entitled? ”

3. The union filed a claim statement on behalf of Sri.K.S.Premachandran, the worker in this industrial dispute. The workman was performing the duties as Attender in the stationery pool of Syndicate Bank, Ernakulam since 31.10.2008 and continues to do the same work even today. The services of Sri. K.S. Premachandran, the workman is not regularized even after so many years of service with the Bank. The Attender’s salary is much more than what the workman is getting now. Hence the workman is entitled to regularization and equal pay for equal work. The denial of the above benefits to the workman is violative of Articles 14 and 39(d) of the Constitution of India. The workman is working continuously with the management Bank from 2008. Hence the union raised the dispute that the service of Sri.K.S.Premachandran be regularized as Attender from 31.10.2008 and he may be granted legitimate salary in the post of Attender w.e.f. 31.10.2008.

4. The management filed written statement denying the above allegations. According to the management, there is no Employer-Employee relationship between the workman and the management as the workman is not an employee of the Bank. The workman was never appointed in services of the Bank. He rendered the service of casual labour at stationery pool, Ernakulam occasionally. His engagement is purely casual in nature and he was in no way connected in business or routine functions of the branch. The management Bank has got prescribed procedure for appointments. No vacancy can be filled up in a Bank according to the will and pleasure of a Bank Manager. All nationalized Banks including present management has got clearly laid down procedure for recruitment in every cadre. The workman has not gone under any such recruitment process to be considered as an employee of the management Bank. If at all there is any relationship between the management and the workman it was in the nature of contract for work and not a contract of work. The workman was engaged for very short periods of few hours in a day or few days in a week and he was also paid the coolie for the work. He was engaged only when the stationery items are received in bulk are required to unloaded and kept in the stationery pool. His services were also utilized for packing and sending the stationery materials all over Kerala and Lakshadweep branches by courier. This is not a permanent nature of work and there is no continuous work for the workman in the stationery pool. There is no sanctioned post of Attender at stationery pool and there is no necessity for the Bank to post Attenders for such manual work for occasional and short duration. The duties and responsibilities of attender are entirely different.

5. The union filed rejoinder reiterating the claim in the claim statement. If the Manager has no authority to engage him then under what authority he is paying daily salary and bonus to the workman.

6. On completion of pleadings, the union was examined WW1 and WW2 and exhibits W1 and W2 were marked through him. Management examined MW1 and marked exhibits M1 and M2 through him.

7. The issues to be adjudicated are :

- a. Whether Sri.K.S.Premachandran the workman is entitled for regularization in service and whether he is entitled for the salary of an Attender/sub staff?
- b. Relief and cost

8. Issue No. 1

According to the union, the workman Sri. K.S. Premachandran is performing the duties of Attender in the stationery pool of Syndicate Bank, Ernakulam since 31.10.2008. According to the learned Counsel for the management, the workman was not provided any regular engagement as claimed by him. Only when there is bulk receipt of stationery in the stationery pool, the services of the workman will be utilized to unload the same, arranged it in the stationery room and distribute the stationery to all the branches of the management bank in Kerala and Lakshadweep through courier. The learned Counsel for the management submitted that the work involves a few hours or a maximum of few days in a month, the daily wages were being paid to the workman. The learned Counsel for the union relied on Exbt. W1 and W2 to argue that the workman was engaged by the management Bank from 2008-2009 to 2011-2012 continuously. Exbt.W1 and W2 are communications from Syndicate Bank Regional Office, Ernakulam to the Manager, stationery pool, Kalamassery dt.25.07.2014 sanctioning a bonus of Rs.23,480/- for the period from 2008-2009 to 2011-2012. According to the learned Counsel for the management, bonus is payable to an employee if he works for 30 days with an establishment. It is also pointed out by the learned Counsel that the workman was paid only minimum bonus for these years. It clearly shows that the workman was not working in the management Bank continuously. The management also produced Exbt.M1 and M2 to prove that there was a scheme to regularize the service of those who worked with the Bank on temporary basis for 240 days and more in a period of 12 consecutive months between 01.01.1982 and 31.12.1989 and also those who had worked on temporary basis for less than 240 days but more than 90 days during the period from 01.01.1982 to 31.12.1989. Detailed instructions regarding absorption of temporary attenders on regular basis was also circulated on 12.11.1998. It is also pointed out that the management Bank issued instructions dt.16.10.2015 for appointment of temporary employees in sub staff cadre ie., Attender and Part Time Sweeper. The above instructions contained details regarding qualification, constitution of the committee and details regarding the methods by which the vacancy shall be arrived at for District wise empanelment. The workman in this industrial dispute was never an applicant to be considered for empanelment for appointment as temporary Attender.

9. The only evidence available to prove that the workman worked in the management Bank is Exbt.W1 and W2. Exbt. W1 is a confirmation copy of the communication sent by the Syndicate Bank Regional Office to the Manager, Stationery Pool, Kalamassery regarding the sanctioning of bonus to the workman from 2008-2009 to 2011-2012. This document would go to show the workman was engaged beyond 30 days in a year by the management Bank from 2008-2009 to 2011-2012. The documents produced by the union will in no way prove the continuous engagement of the workman by the management Bank. When the management Bank denied continuous engagement, the burden goes on the union to prove that the workman was engaged continuously during these years by the management. The union did not make any attempt in that direction to substantiate their case of continuous engagement or engagement upto 240 days by the management. In such engagement of workers, there will be no proof regarding appointment. However the management will have proof regarding payment of salary which ought to have been called for to substantiate his case of continuous engagement. In the absence of any proof to that effect, it is not possible to accept the claim of the union that the workman was engaged continuously by the management Bank. Further the learned Counsel for the management also argued that there is no sanctioned post of Attender in Stationery Pool at Kalamassery.

10. Considering the facts, evidence and pleadings in this industrial dispute, I am inclined to hold that the evidence in this industrial dispute will not in any way support the claim of the union for regularization in the cadre of Attender and therefore he is not entitled for the salary and other benefits of an Attender/sub staff in the management Bank.

11. Issue No. 2

In view of findings at issue no.1, the union is not entitled for any relief claimed in the claim statement.

Hence an award is passed, holding that the action of the management of Syndicate Bank in not regularizing the service and not paying legitimate salary to Sri.K.S.Premachandran is fully justified. He is not entitled for the relief claimed by the union in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 4th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Shri. K.S. Bhat, dt.20.05.2016

WW2 - Shri.K. S. Premachandran, workman dt.26.04.2019

Witness for the Management:-

MW1 - Shri. Kiran Kumar.H, dt.28.10.2019

Exhibits for the Workman:-

W1 - Letter dt.25.07.2014 from Manager, Syndicate Bank, Regional Office, Ernakulam (Personnel Cell) to Manager, Stationery Pool, Kalamassery regarding the issuance of Rs. 23480/- being the amount of bonus paid to workman for the years 2008 to 2012

W2 - IP Message sent by Syndicate Bank (Personnel Cell), Regional Office, Ernakulam to the Manager, Stationery Pool, Kalamassery regarding the issuance of Rs. 23480/- as bonus to workman for the period from 2008 to 2012

Exhibits for Management:-

M1 - Circular no.034-2006-BC-HRD dt.24.02.2006 issued by Syndicate Bank

M2 - Revised Circular No.435-2015-BC-PD-55-HRDD dt.16.10.2015 issued by Syndicate Bank.

नई दिल्ली, 7 अक्टूबर, 2020

का. आ. 916.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 25/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हुआ था।

[सं. एल-22012/7/2014 -आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी /अनुभाग अधिकार

New Delhi, the 7th October, 2020

S. O. 916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 05.10.2020.

[No. L-22012/7/2014 -IR(CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/25-2014****Present:** P. K. Srivastava, H.J.S..(Retd)

The Joint General Secretary
 Rashtriya Koila Khadam Mazdoor Sangh (INTUC)
 Shramik Shakti Bhawan,
 PO Chandametta
 District-Chhindwara

... Workman

Versus

The Manager
 Western Coalfields Ltd.
 Tandsi Project Kanhan Area
 PO Rampur (Demua)
 District Chhindwara

... Management

AWARD(Passed on this 18th day of September--2020)

1. As per letter dated 18/3/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/7/2014-IR(CM-II)The dispute under reference relates to:

“Whether the action of the demand of the Union for providing compassionate appointment to Shri Manoj the applicant, younger brother of Late Dinesh, Ex-Employee of WCL, Tandsi Sub Area Kanhan Area, District Chhindwara(MP) is just reasonable and fair? If yes, what relief the applicant is entitled to and from which date? .”

1. After registering the case on the basis of reference, notices were sent to the parties.
2. Parties have filed their respective statement of claim/defence.
3. According to the workman, his brother Dinesh was appointed by Management on 2-12-1996 in Tandsi Project Kanhan Area and died on 21/7/1997 during the course of employment. The workman, being dependent family member, applied for compassionate appointment on the ground that the claim was made at a highly belated stage of 8 years and was not fit for compassionate appointment which is against law and rules. The workman side has accordingly requested that the applicant be offered compassionate appointment as dependent brother of the deceased workman Dinesh.
4. The case of Management is that deceased was appointed in place of his mother Premwati on compassionate basis after Premwati sought retirement under Voluntary Retirement Scheme. Dinesh died on 21/7/1997. His widow had remarried to other person, she did not apply for compassionate appointment. The present applicant Manoj claimed for compassionate appointment as dependent brother of the deceased workman Dinesh, who was himself appointed on compassionate basis as stated above, after a lapse of 7 years his representation was considered and was rejected as highly delayed. According to the Management the financial condition of the family was sound and that is why the original compassionate appointee mother Premwati sought voluntary retirement. It was also claimed that applicant Manoj was not dependent on deceased workman Dinesh and the legal heir of the deceased workman never applied for compassionate appointment. Also it was pleaded that compassionate appointment is not a matter of right . Accordingly it has been prayed that the reference be answered against the workman.
5. The workman side filed some photocopy of documents which were not admitted by Management and not proved by workman side.
6. During the course for hearing the workman side absented itself and case was ordered to proceed ex parte vide order dated 14-8-2019.

7. The Management has filed its affidavit supporting its case as stated above. No evidence was filed from the workman side.

8. Arguments of Mr. A.K. Shashi, learned counsel for the Management were heard on ex-parte basis. I have gone through the record.

9. **The reference is point for determination in the case in hand.**

10. The burden to prove its case is on workman side which has not been discharged. Hence the case of the workman does not stand proved and the reference is required to be answered against the workman.

11. Accordingly the **demand of the workman side for providing compassionate appointment to Manoj the applicant, the younger brother of late Dinesh an ex-employee is held not justified and the applicant is held entitled to no relief.**

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 18.9.2020

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 7 अक्टूबर, 2020

का. आ. 917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – मह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 64/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.10.2020 को प्राप्त हुआ था।

[सं. एल-22012/16/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकार

New Delhi, the 7th October, 2020

S. O. 917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 05.10.2020.

[No. L-22012/16/2013-IR(CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/64/2013

Present: P. K. Srivastava, H.J.S..(Retd)

The General Secretary
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
Shram Shakti Bhawa,
PO Chandamedha,
District Chhindwara (M.P.)

... Workman

Versus

The Manager
Western Coalfields Limited,
Chhinda Colliery, Pench Area,
P.O. Chhinda, Tehsil Parasia,
District Chhindwara (MP)

... Management

AWARD(Passed on this 21st day of August-2020)

1. As per letter dated 9-4-213 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/16/2013-IR(CM-II). The dispute under reference relates to:

“Whether the demand of the Union/Workman for modification/conversion in the post from BlastingMazdoor to Sub Station Attendant in respect of Smt. Shantabai, W/o late Ramprasad, Chhindia Colliery, WCL, Pench Area is justified, valid and reasonable? If yes, what relief the workman is entitled to and from which date?”.

1. After registering the case on the basis of reference, notices were sent to the parties.
2. Both the sides have filed their pleadings which shall be referred to as and when required.
3. The Workman side filed photocopies of the documents but the workman never appeared after filing his statement of claim nor did he produce any oral or documentary evidence admissible in law.
4. The Management side examined on oath its witness who has denied the claim of the workman. None was present from the workman side to cross-examine, hence closing the opportunity of cross-examining the Management witness by the workman, the witness was discharged.
5. The case proceeded for arguments but none appeared from the workman side for arguments and no written arguments were filed. Mr. A.K.Shashi, learned counsel for Management appeared and his arguments were heard.

6. The Reference is the point for determination in the case in hand.

7. The Fundamental principle of law is that the burden to prove his case lies on the person who asserts the claim. The workman did not discharge this burden. On the other hand the Management witness has fully controverted the claim in his statement of oath which is uncross-examined inspite of opportunity being given.

8. In the backdrop of these circumstances, it is lawful to hold that the claim of the workman is not proved, hence the reference deserves to be answered against the workman and he is held not entitled to any relief.

9. On the basis of the above discussion, following award is passed:-

A. The demand of the Union/Workman for modification/conversion in the post from Blasting Mazdoor to Sub Station Attendant in respect of Smt. Shantabai, W/o late Ramprasad, Chhindia Colliery, WCL, Pench Area is not justified and is illegal and unreasonable.

B. The workman is held entitled to no relief.

C. No order as to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 21.8.2020

P. K. SRIVASTAVA, Presiding Officer